

REVENUE RULINGS

(CONSOLIDATED)

1914-1931

THE FULL AND VERBATIM REPORTS OF ALL REPORTABLE
RULINGS OF THE FINANCIAL COMMISSIONER, PUNJAB,
AND Revenue decisions of Lahore High Court, WITH MOST
EXHAUSTIVE NOMINAL AND SUBJECT AND COM-
PARATIVE TABLES, CONTAINING ALSO NUMER-
OUS RULINGS NOT SO FAR REPORTED
ELSEWHERE.

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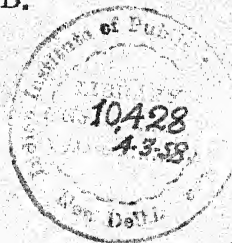
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Applications, on the revision side, from disappointed parties to revenue litigation are very numerous and in the majority of them the grounds put forward might serve as grounds of appeal, if appeal were permissible, but are not and hardly ever affect to be, grounds for the exercise of so exceptional a jurisdiction as that of the Financial Commissioners on the revision side.

The revisional jurisdiction of the High Court is limited by S. 115 of the Civil Procedure Code to cases in which a subordinate Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, but it has always been recognised that the Financial Commissioner, acting under S. 84 (5) of the Punjab Tenancy Act, has, within the limits prescribed for the revisional jurisdiction of the Chief Court, an absolute discretion to determine whether his intervention is expedient. There is a succession of rulings on the point and in *Amam Din v. Jiwan* (1), it was very clearly and in very general language ruled, that the broad principle to follow is, to interfere only when a refusal to interfere would result in injustice or failure of justice.

In the present case there are two distinct reasons for declining to exercise the revisional jurisdiction. In the first place, there is, on the part of two courts a definite finding supported by the Revenue Records of facts which give jurisdiction to the Revenue Courts and render the plaintiffs-applicants liable to ejectment. The circumstances which would justify this Court, on its revision side, in holding that a subordinate Court had acted either without jurisdiction or illegally or with material irregularity, when, on the facts found by that Court, there is no such lack of jurisdiction and no illegality or material irregularity, would have to be of a very exceptional kind though absolute perversity in the finding or a serious misapplication of the law of evidence in arriving at it, might justify such interference. Apart from this point, there is no suggestion that the decision of the subordinate Courts in the present case has resulted in injustice.

The application is rejected.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 181 of 1913-14. ((Decided on 25-3-1914.)

Revenue.

Maynard, F. C.

BHADARI and another

Applicants

Versus

CROWN

Other Side.

Punjab Colonization of Land Act, 1912, S. 12—grant—confiscation of—canal colony lands—ownership of habitable house—conclusive evidence of residence.

[1] 2 P.R. (Rev.), 1910.

When a colony is firmly established the absence of or presence of a particular grantee becomes a matter of little or no public importance. If he has not acquired proprietary right, he retains no doubt his technical liability to fulfil the condition of personal residence but the fact that a grantee has a habitable house in his Chak must be accepted as conclusive evidence that he is fulfilling the condition of residence.

Revision from the order of the Commissioner of Lahore Division.

ORDER.

The facts of this case are that the ousted grantees have a substantial house in the Chak which is fit to live in and is provided with all necessary furniture. From the Lambardar's statement in vernacular it appears that the applicants have paid their share of expenses incurred in the building of the village mosque and the village drinking well.

Not having obtained proprietary rights, they were technically liable to be ousted by reason of their non-residence, and an order of confiscation was passed against them on March 28th, 1913. The house is said to have been built 15 or 16 years ago, and I gather that the grant which has now been confiscated dates back to the early days of settlement on the Rakh Branch of the Lower Chenab Canal.

For the first 12 or 15 years of a new colony's existence, the settlement is in some measure precarious, and there is special justification for insisting meticulously on the condition of residence. Later on, when the colony is firmly established, the absence or presence of a particular grantee becomes a matter of little or no public importance.

If he has not acquired proprietary right, he retains, no doubt, his technical liability to fulfil the condition of personal residence, but it becomes very undesirable to enforce this by confiscation, and the proper course is to accept the existence of a habitable house as sufficient evidence of residence, and to make no further inquiry into the habits of the grantee. One great objection to the continuance of enquiries of this kind is the very undesirable power which they place in the hands of subordinate officials.

I hold, therefore, that the time has now come throughout the whole of the Lower Chenab Colony when the fact that a grantee has a habitable house in his Chak must be accepted as conclusive evidence that he is fulfilling the condition of residence. In order to apply this principle in the present case, enquiry will be made as to the disposal of the square which was confiscated, and restoration will be ordered, if feasible.

Order accordingly

NAWAB ALI v. LAL SINGH. 6
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 145 of 1913-14. (Decided on 12-8-1914)

Maynard, F. C.

NAWAB ALI and another

Applicants

Versus

LAL SINGH

Other Side.

**Punjab Tenancy Act, S. 8—acquisition of occupancy rights by
tenant—breaking up waste—Mauza Ganga, Tahsil Sirsa.**

Held, that in the absence of any express clause in the Administration Papers of a village conferring occupancy rights, the fact that a tenant or his ancestors had broken up waste land prior to 1882 in Sirsa is a criterion for determining whether the tenants had acquired occupancy rights under S. 8. The application of the said criterion depends upon the particular facts of each case and that the question at issue in every such case is one of fact whether the circumstances and in particular the rate of rent paid point to the conclusion that at the time when the waste was broken up tenants were so scarce as to be in a position to dictate their own terms. In cases where the breaking up of waste took place prior to 1882, the probability that tenants were so scarce is greater than in cases where it took place later, but the probability is not to be taken as certainty in any case and all the circumstances must be examined.

Revision from the order of the Commissioner, Ambala Division.

ORDER.

I have heard the parties in this case. The applicants are tenants in Mauza Ganga of Tahsil Sirsa, and the land in dispute was broken up by them partly before and partly after 1882, while a portion of it was not broken up by them at all but received by them in an already cultivated state. The landlord having sued for possession by ejectment, the tenants sued for occupancy rights, which all the lower Courts have found that they have failed to establish.

As in many villages of the Sirsa Tahsil, the Administration Papers of the settlements both of 1862 and 1882 contain a clause which sets forth the right, in the first place of the owners, and in the second place of the occupancy tenants, to break up waste and adds that, if these be unwilling, the right will be given to some one else. In the fifth ground of the application for revision, the applicants refer to this clause and claim it as establishing their rights of occupancy.

A clause of the same character in the Administration Paper of the village of Diwan Kheora in the Dabwali Tahsil of the old Sirsa District, came under the consideration of the Financial Commissioner, Sir J. Lyall, in case No. 5 of 1881-82. He observed that there was nothing in the rule

expressly declaring that an occupancy tenant, obtaining and cultivating waste land under the clause, would acquire a right of occupancy in it. But in the circumstances of the particular case (which was one of first founding in 1853 and a subsequent refounding in 1861 after abandonment in consequence of drought) Sir J. Lyall held that tenants of the village, classed as occupancy tenants at the Settlement of 1862, who had been allowed to break up waste land under this clause within the term of the expiring Settlement (1862-1882) were entitled to a right of occupancy in the lands broken up.

In case No. 406 of 1897-98, a similar case connected with occupancy rights in the same tract came before Mr. Thorburn, then Financial Commissioner. In the course of his judgment Mr. Thorburn observed

"Considering the fact that clause 6 only gave the right to break up waste, but is silent as to what status such *butamari* confers, it cannot be held that *butamari per se* confers an occupancy right. As to whether it does or not, must turn on whether or no at the time *butamars* were scarce, in a position, so to say, to make their own terms and the advantages of getting new land brought under the plough were great to the landowners. A decision on this point will partly depend on the rents taken."

In the particular case then under his consideration, Mr. Thorburn decided that each plaintiff was "entitled to occupancy rights under S. 8, Punjab Tenancy Act, in respect of all land broken up and since held by him or his predecessor-in-interest in or before 1882, and that, in respect of lands subsequently broken, the question depends on the finding of fact as to in what year from any cause the competition changed from one for tenants on any terms almost, to one for land amongst tenants on such terms as the landlords chose to dictate."

In the case now before me the second ground of revision amounts to a claim that this judgment has established as a general principle of tenancy law for unirrigated villages of the old Sirsa District, that a tenant who has broken up land prior to 1882 is entitled to occupancy rights in that land. This claim is not limited to tenants who enjoyed occupancy rights in other land in the village prior to 1882 and in this case it is shown that the father of the applicants had no such rights in this village prior to the Settlement of 1882.

The Assistant Collector who originally decided against the applicants held that in the present instance, there was not the slightest reason to suppose that there was any scarcity of tenants when their father broke up the land now in dispute and added that the rent rate (which, as pointed out by Mr. Thorburn, is an important consideration in determining whether the evidence points to a scarcity of tenants) is high. The rent rate

is four annas and four pies per pakka bigha, equivalent to seven annas and two pies per acre, a rate which is certainly not particularly low for *barani* lands in the Sirsa District and was double the land revenue rate in this village. In rejecting the application for revision the Commissioner observed that the real point was "whether at the time that this land was first broken up and occupied by appellant or his ancestors, the competition for land was such that the tenant could make his own terms, or such that the landlord could do so, i. e.; was land scarce or were tenants scarce, and he held that the facts established that the tenant was, at the time, in the less favourable position a conclusion from which there is no reason to differ.

Mr. Thorburn's decision in case No. 406 of 1897-98 did not establish a new principle of law conferring occupancy rights under S. 8 on all tenants in the old Sirsa District who had broken up waste prior to 1882. It merely provided a new criterion by which each claim put forward by such persons to the establishment of such rights might equitably be decided. The application of the criterion depends upon the particular facts of each case, and the question at issue in every such case is one of facts whether the circumstances and, in particular, the rate of rent paid, point to the conclusion that, at the time when the waste was broken up, tenants were so scarce as to be in a position to dictate their own terms. In cases where the breaking up of the waste took place prior to 1882 the probability that tenants were so scarce as to be in a position to dictate their own terms is greater than in cases where it took place later. But the probability is not to be taken as a certainty, in any case, and all the circumstances must be examined.

In the present case, there are no grounds of revision at all in respect to that portion of the land which was received by the applicants' father in an already cultivated state. In respect to the remaining land, the contention of the applicants fails for the reasons explained, and they have not proved the facts which are requisite in order to establish the occupancy status on the principle laid down in case No. 406 of 1897-98.

The application is rejected.

Application rejected.

The orders in case No. 406 of 1897-98 referred to in above is as follows:—

Thorburn, F. C. (7-4-99)—From the Collector's return, dated the 16th February 1899, giving cover to a report by Mr. Humphreys, Assistant Collector, dated the 6th February 1899, both of which are to be read as part this Court's of judgment, the Assistant Collector's report from the words "Report re Collector's order, dated the 5th January 1899," the answers to the points referred, omitting for the moment No. 1, are as follows:—

(2) Registered occupancy tenants pay at a rate under Re. 0-6-0 the cultivated bigha, which is apparently the rate plaintiffs have paid out since last settlement (3) the partition occurred in Sambat 1919 (A. D. 1862), or 20 years before Mr. Wilson's Settlement of 1862 (4) no instances are established. As to (1), the translation of the *Wajib-ul-arz* field shows that in paragraph 6 on "mode of breaking up *banjar*" the conditions were that the owners first and after them the occupancy tenants, "shall have the right to break up waste land, and in the event of their refusing to do so, land will be given to another person." This clause was apparently originally inserted in the 1862, Settlement and repeated in that of 1882. Its broad and obvious intention was to encourage the breaking of waste by owners, occupancy tenants and outsiders put in by the *Lambardar*, or owners in the order named. The condition suited owners as it brought them income, and it suited Government and was no doubt inserted at the instance of the Settlement Officer in 1862 in order to benefit Government to some extent by strengthening the village. Mr. Agnew, the Collector, makes a great point in this case, that the *Wajib ul-arz* para. related only to "*Shamilat-deh*" not "*Shamilat patti*." Had this been intended the intention would have been made clear, but from the omission and remarks just made, I am convinced that the "waste" referred to was, "waste" generally. whether held by the owners composing a village or only a part of a village why in this case the partition took place in Sambat 1919 or A.D. 1862, twenty years before the 1862 entry was repeated in the 1882 Settlement. Here a question arises as to what rights the breaking up of the waste conferred. Evidently if the return about rent rates is correct, it did not *per se* put occupancy tenants breaking up waste in as high a category as that in which they stood with reference to their older acquired lands for which they were recorded as occupancy tenants. It did not do so, because otherwise they would have been entered in the annual papers as occupancy tenants and not as tenants-at-will, and would have paid a lower rent than Re. 0-6-0 a bigha.

As to the alleged agreement on which the tenants rely, it was, if made, oral, and cannot be proved. At the same time some such agreement was usual, so long as there was plenty of waste and a scarcity of tenants. Indeed it is on the face of it improbable that a man would break up waste without a guarantee of possession at a limited rent rate for at least a term of years, without such a protection it is inconceivable that the occupancy tenants (plaintiffs in this case) would have extended their cultivation. I understand that in the approaching Settlement there will be a large number of disputes of the present type, *i.e.*, the landlords will try to eject occupancy tenants and others who have under a clause in the *Wajib-ul-arz*, such as the No. 6 in this case, broken up and cultivated waste, and the *butamars* with appeal to the *Wajib-ul arz* entry as giving them occupancy rights. The

reason why the question of status has become a burning question is either increase of population or, more probably, as here, the fact that canal irrigation is being or has been extended to the village.

Considering the fact that clause 6 only gave the right to break up waste, but is silent as to what status such *butamari* confers, it cannot be held that *butamari per se* confers an occupancy right. As to whether it does or not, must turn on, whether or no at the time *butamars* were scarce, in a position, so to say, to make their own terms and the advantages of getting new land brought under the plough were great to the landowners. A decision on this point will partly depend on the rents taken. Applying the above principle to this case, it is clear that as the village was *barani* canal is only now I understand being brought to it and the demand for tenants great, up to 1882, at all event, land *personally* broken up in or before 1882 and since cultivated by occupancy tenants, must be held to rest in them as occupancy tenants under S. 8 Punjab Tenancy Act. This view I see is very much that taken by Mr. (Sir James) Lyall as Financial Commissioner in the Diwan Khera Case, appeal No. 5 of 1881-82.

It follows then that these 4 revision petitions must be accepted.

Parties are summoned.

Thorburn, F.C. (27-4-1899).—Parties are present and each represented by counsel. Mr. Brown for the respondents and Pandit Sham Dass for the plaintiffs. For the landlords it is urged that the 1882 entry was a mere repetition and that had *butamari* conferred occupancy rights that status would have been recorded as held by the *butamari* and further that, as registered occupancy tenants pay at about Re. 0-3-0 a bigha and these men pay at Re. 0-6-0 or about that, the rent rate shows that they have no occupancy right. For the tenants the entry is appealed to and the fact is pointed out that waste began to be broken up in 1872 and continued to be so broken until long after 1882. On the whole it is pretty certain that no close inquiry preceded the repetition of the old entry of 1862 in the revised *wajib-ul arz* of 1882 and that the *butamars* were not in 1882 given occupancy rights because there was no judicial order conferring such rights and the entry itself was vaguely worded.

The conclusion to which I come is that each plaintiff is entitled to occupancy rights under S. 8, Punjab Tenancy Act, in respect of all land broken up and since held by him or his predecessor in interest, in or before 1882, and that in respect of lands subsequently broken the question depends on the finding of fact as to in what year landlords had occasion to stop the further breaking of waste in their own interests, *i.e.*, in what year, from any cause, the competition changed from one for tenants, on any terms,

almost to one for land amongst tenants at such terms as the landlords had to dictate.

I accept all four applications and, reversing Collector's order, decree plaintiffs' occupancy rights under S. 8, Punjab Tenancy Act, in respect of all land broken up by them or those from whom the present tenants inherit up to 1882, the actual plots in each case having now to be ascertained and decided by the Collector and the Assistant Collector and as to later broken up land the question of fact has to be decided, *viz.*, the year in which landlords ceased to find it to their interest to get waste broken up at all by tenants with occupancy rights.

I refer back all four cases for inquiry and decision as the question of fact as regards each point to be decided. I may add here that counsel for defendants (landlords) admits that in this case the fact that land was *Shamilat patti* and not *Shamila deh* is immaterial. In any case the landlords were very few.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue.

No. 176 of 1913-14. (Decided on 6-5-1914)

Maynard, F.C.

RUGHA

Applicant

Versus

MUGHLI and others

Other side.

Punjab Tenancy Act, Ss. 38 and 59 (1) (b)—effect of abandonment under S. 38.

Abandonment, like ejectment, terminates the rights of the widow, and the right of occupancy at once devolves upon the next claimant. At the very moment that the widow completes the period required to bring S. 38 of the Punjab Tenancy Act into operation, she ceases to be "the tenant having the right of occupancy" by the operation of S. 59 (1) (b).

Case forwarded by the Commissioner, Ambala Division.

ORDER.

The parties are represented before me by counsel. A widow who had succeeded to occupancy rights held by her deceased husband left the villages in which the land was situated. The prior nature of the arrangements which she made for the cultivation of the land and the manner in which effect was given to them are not entirely clear from the file. Apparently, the person whom she employed to cultivate for her continued to cultivate on behalf of the landlords. At any rate the owners (who are the co-sharers in the village) say that they regularly received rent from the tenant Shahzada, though the language employed appears to amount

to a contention that he is cultivating on their behalf and not on behalf of any occupancy tenant.

The landlords claimed in mutation proceedings that the name of the widow should be removed from the column of occupancy and this claim was upheld as far as the Collector's Court. The Commissioner has referred the case for revision on the ground that the act of the widow did not affect the rights of the collaterals, who are admittedly descended from the ancestor who originally held the tenancy.

The widow having left the village some years ago, a fresh entry of some sort is necessary, and the question is what it should be

The rights of a widow in an occupancy tenancy are very strictly limited by law. She cannot transfer the right by sale, gift, or mortgage, or even by sub-lease for a term exceeding one year. It would be somewhat surprising if, in the circumstances, a mere act of neglect on her part would suffice to destroy the rights of persons who are protected by law against her wilful disposal of the property.

Clause (b) of S. 59 (1) makes the legal position clear: abandonment, like ejection, terminates the rights of the widow, and the right of occupancy at once devolves upon the next claimant. At the very moment the widow completed the period required to bring S. 38 of the Punjab Tenancy Act into operation, she ceased to be "the tenant having the right of occupancy" by the operation of S. 59 (1) (b).

An attempt has been made before me to show that the collaterals were themselves guilty of abandonment, because they did not at once enter upon and manage the tenancy. It appears that they misunderstood this legal position and thought they must wait till the widow's absence has lasted a stated number of years. Be this as it may, it is clear that a person who has never been in actual possession of a tenancy has not the opportunity of cultivating and arranging for the cultivation of the land of which it consists: and I hold that in order to establish the conditions contemplated by S. 38, the tenant whose abandonment of his tenancy is alleged, must have been at some time in possession of the tenancy in question.

I accept the application and order mutation of the occupancy tenancy in the names of the collaterals of the deceased tenant Niadar: with costs in favour of the applicant.

Application accepted.

12 PUNJAB CASE-LAW, PART C. [1914].
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 121 of 1913-14. (Decided on 5-5-1914).

Maynard, F. C.

HIRA and others

Applicants

Versus

NIHAL SINGH and others

Other side

Punjab Tenancy Act, Ss. 45, 84 (5)—notice of ejectment embracing other lands—suit to contest notice—dismissal for default—possession given to landlords in execution proceedings—material irregularity—interference on revision.

The respondents (landlords) caused a notice of ejectment under S. 45 (1) of the Punjab Tenancy Act to be served upon the applicants in respect to certain land. One of the fields (No. 748) which was included in this notice had been held in previous judicial proceedings to be a part of the land from which the applicants (tenants) were not liable to ejectment. This important fact was overlooked in dealing with the notice of ejectment. The tenants sued to contest their liability to ejectment, and obtained an ex-parte decree in their favour; but this ex-parte decree was set aside. When the case came up, the tenants absented themselves from the court and on this occasion their suit was dismissed in default. Held, that the Financial Commissioner will exercise his powers under S. 84 (5) of the Punjab Tenancy Act (within the limits set by the Civil Procedure Code to the revisional jurisdiction of the Chief Court) only when interference is necessary in order that substantial justice may be done and that the fact that the ejectment proceedings were twice in succession decided otherwise than upon merits, did not justify interference upon the revision side in the absence of any indication of material irregularity. Held, further, that one material irregularity in the proceedings was the carelessness inclusion in the notice of ejectment and the subsequent delivery of possession of field No. 748, and proceedings in respect thereof should be set aside.

Case forwarded by the Commissioner, Jullundur Division.

ORDER.

The applicant did not wish to be represented before me in this case. I have heard counsel for the respondents.

The facts, in so far as they affect the present proceedings are these. The respondents (landlords) caused a notice of ejectment under S. 45 (1) of the Punjab Tenancy Act to be served upon the applicants in respect to certain land. One of the fields (No. 748) which was included in this notice had been held in previous judicial proceedings to be a part of the land from which the applicants (tenants) were not liable to ejectment. This important fact appears was overlooked in dealing with the notice of ejectment.

The tenants sued to contest their liability to ejectment, and obtained an *ex parte* decree in their favour: but this *ex parte* decree was set aside.

When the case came up, the tenants absented themselves from the Court, and on this occasion their suit was dismissed in default.

In passing orders, the Court did not direct the ejectment of the tenants in accordance with S. 45 (6) of the Punjab Tenancy Act, and the Commissioner is of the opinion that this omission was a technical irregularity. Notwithstanding the absence of any specific direction of ejectment, possession was given to the landlords (respondents) by proceedings in execution of decree.

In referring this case for action on the revision side the Commissioner is, if I understand him correctly, influenced by two considerations. Over and above that of the irregularity in the form of the decree, which he describes as technical only. One of these considerations is that the case has never been tried on the merits, and the other is that the ejectment proceedings included field No. 743, which, as already noted, had been held to be land from which the tenants (applicants) were not liable to ejectment.

In regard to the omission of the direction for ejectment from the order of dismissal, I may say that the definition of decree in S. 2 of the Civil Procedure Code (from which an order of dismissal for default is expressly excluded) makes it somewhat doubtful whether there is any technical irregularity at all. It is, however, not necessary to determine this point, because a technical irregularity is certainly not a good ground for interference on the revision side.

It has been laid down more than once, and I take this opportunity of re-stating the doctrine, that the Financial Commissioner will exercise his powers under S. 84 (5) of the Punjab Tenancy Act (within the limits set by the Civil Procedure Code to the revisional jurisdiction of the Chief Court) only when interference is necessary in order that substantial justice may be done.

What happened in this case was that the tenants contested their liability to ejectment, but failed to establish their contention. If we leave out of account, for the moment, the other aspects of this case, it seems clear that broad considerations of justice call for the decision, either—

- (1) that the original notice of ejectment which the tenants contested holds good in consequence of their failure in the proceedings.
or
- (2) that the order of the Court carried with it a direction of ejectment, and that the successful litigant should not suffer from a technical irregularity (if there was a technical irregularity) for which the Court and not he was to blame.

The fact that the ejectment proceedings were twice in succession decided otherwise than upon the merits, does not justify interference, upon

the revision side, in the absence of any indication of material irregularity. Against the decision dismissing their claim in default, the tenants applied unsuccessfully for a review; and their subsequent appeal was also rejected. There is no reason why the Financial Commissioner should upset the decision now.

The one material irregularity in the proceedings was the careless inclusion in the notice of ejectment, and in the subsequent delivery of possession, of field No. 743. I set aside so much of the proceedings as dealt with field No- 743 and order the restoration of the possession of that field to the tenants (applicants). In all other particulars, the application is rejected. I pass no order as to costs.

Application rejected

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 406 of 1912-13. (Decided on 2-11-1924).

Diack, F.C.

LAKHI and others

Applicants

Versus

MALIK DOST MOHAMMAD KHAN and others

Other side.

**Punjab Land Revenue Act, S. 115—Sufficient cause—clause in
wajib-ul-arz prohibiting partition—whether amounts to.**

Where a clause in the Wajib-ul-arz prohibiting partition, so that cattle might not be deprived of pasture, was drawn up when the land was valued for its pasture greatly, but since then there has been a considerable reduction in the number of cattle kept by the community and a very large area has been broken up for cultivation, held, that the above clause could not operate as a bar to partition, all the more when a large section of the community was opposed to the prohibitory clause.

Revision from the order of the Commissioner, Rawalpindi Division.
ORDER.

On an application for the partition of the common land of mauza Adhi Sargal the Settlement Officer, by his order dated 11th December 1912, directed that the partition should be carried out and should be effected in a certain way. An appeal was preferred to the Commissioner on two main grounds: (1) that partition was contrary to the provisions of the Wajib-ul-arz of the estate and (2) that the measure of right laid down by the Settlement Officer as governing the method of partition was erroneous. On these points the Commissioner held in his order dated May 23rd, 1913, that (1) as a similar order passed in regard to mauza Mitha Tiwana, directing partition in spite of the provision of the Wajib-ul-arz to the contrary, had not been impugned by the Financial Commissioner on

revision, the Settlement Officer's order should stand and (2) Settlement Officer having referred the parties to civil suit as to the matter of the measure of right, if any of them contested his finding, there was no reason to interfere. On 2nd September 1913, the opponents of partition filed the present application for revision, contesting the decision of the Commissioner on both points.

As regards the second point there is *prima facie* no reason to suppose that the decision of the Settlement Officer is erroneous and it is open to the applicants to contest the matter in a Civil Court and I therefore agree with the Commissioner that there is no need to interfere.

As regards the first point the question whether a clause in the Wajib-ul-arz prohibiting partition is a bar to partition even when the conditions under which the clause was inserted have changed, does not appear to have been ever definitely decided in this office. The case of Mitha Tiwana quoted by the Commissioner is not directly in point. It is true that partition was there ordered contrary to such a clause, but in the revision case decided by Sir J. Douie on 23rd April 1911, the only point for decision was whether the area which had been reserved from partition in order to form a grazing ground was not too large, the parties being apparently agreed that the remainder of the Shamilat should be divided, and the decision was that the area reserved was not too large.

In *Taja v. Tara Chand*, (1), it was held that the question whether such a clause should prevail was one that should be decided by the Revenue Officer dealing with the partition case and should not be referred to the Civil Court, but on the merits of the question no opinion was pronounced. The further history of the case shows that partition was acquiesced in by all concerned, it being a case where unculturable riverain land had been made culturable by a change in the river, and consequently no further appeal or application was preferred to the Financial Commissioner.

It has been ruled in several cases that statements or agreements in the Wajib-ul-arz relating to the rent of occupancy tenants are binding only for the term of settlement. And *Dilsukh Ram v. Nathu Singh* (2) is a case where an agreement in the Wajib-ul-arz was held to be a binding custom (as to *haq shufa* in respect of a mortgage with conditional sale). But none of these bears directly on a clause prohibiting partition. On the other hand, the Mitha Tiwana case is so far a precedent that it shows that by agreement among the landowners such a clause can be ignored.

In the present case the wording of the clause, in the future tense,—
“*taqsim nahin karenge, ki charai mal maweshi men nuqsan hota hai*”—
shows that it is of the nature of an agreement rather than a custom. And even a custom may be abrogated by a custom (Rattigan's Customary Law,

(1) 11 P.R. 1896. (Rev.)

(2) 98 P.R. 1894 (F.B.)

para. 5). The question is whether when, as in this case, there is a difference of opinion among the shareholders as to whether the agreement or custom should be enforced, it should be upheld or not.

It is matter of common knowledge that the inhabitants of the Thal in which this village lies have found the cultivation of gram in its hollows to be a profitable undertaking. There has in consequence been a revolution in its conditions. The whole wording of the Wajib-ul-arz shows that it was drawn up to suit a time when the Thal was valued only for its pasture and the only agriculture known was occasional cultivation of *moth* and *baira* in the kharif harvest. The particular clause in question, forbidding partition because it would be an obstacle to grazing, shows that it was designed for another period. The tahsildar's report shows that a very large area (over 5,500 *bighas*) has been broken up for cultivation, that persons other than owners are largely taking advantage of the provision in restraint of partition to obtain cultivating possession of portions of the common land, and that there has been a considerable reduction in the number of cattle kept by the community. If, in spite of all these circumstances, a large majority in interest of the owners of the estate were of opinion that the condition of the Wajib-ul arz should prevail it might be maintained. But when it is contested by large section of the community it can no longer be maintained as an agreement, and if regarded as a custom it may be held to have become inoperative as contrary to justice and equity, and it is open to the Revenue Officer dealing with a partition to direct under S. 116 of the Act that it may be carried out notwithstanding.

The application is rejected.

Revision rejected.

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 191 of 1913-14. (Decided on 22-7-1914.)

Maynard, F. C.

NATHU

Applicant

Versus

BISHNA and others

Other side.

Punjab Land Revenue Act, S. 115—partition proceedings—decisions of Revenue Officers—applicability of S. 11, Civil P. C.

Held, that S. 11 of the C. P. C. has no application to the partition orders of Revenue Officers. Under S. 115 of the Act, a Revenue Officer has a discretionary authority absolutely to disallow an application for partition and he ought to use this authority in every instance in which the same

question has been previously decided, unless it is shown that the circumstances which made the previous order appropriate have changed.

Revision from the order of the Commissioner of Ambala Division.

ORDER.

I have heard pleaders for the parties. It is admitted that on 14th October 1909 the Assistant Collector of Rupar rejected an application for the partition of the same land which is the subject of the present proceedings. The order against which this application has been lodged is one affirming upon appeal the Collector's order that partition of the land shall proceed, if Nathu (present applicant) fails to sue to establish proprietary right on 2 bighas of it by a stated date. And the issue before me is virtually this, whether, by virtue of S. 11 of the Civil Procedure Code or by any other principle of law, the order rejecting the partition in 1909 renders illegal the order permitting the partition in 1913.

It is plain enough that a Revenue Officer acting as a Civil Court under S. 117 (2) of Act XVII of 1887 is properly described as a Court trying a suit and that if, in this capacity, a Revenue Officer had decided a partition question in issue between the parties to partition proceedings, S. 11 of Civil Procedure Code, embodying what is commonly described as the principle of *res judicata*, would be a bar to the re-decision of the same question between the same parties. The position is, however, an entirely different one when the Revenue Officer is acting, not as a Court under S. 117 (2), but merely as a Revenue Officer dealing with an application for partition. In this capacity, he acts as an administrative authority, not as a Court, the proceeding is an administrative adjustment, not a suit, and the decision is embodied in an order, not in a decree. As was held by the Financial Commissioner in Punjab *Mullik Fattah Sher Khan v. Mullik Sher Bahadoor Khan* (1), where the question in issue was the form in which a jagirdar was entitled to collect revenue, and the claim had been disallowed in 1862, I hold that the matter is an administrative one, to which the principle of *res judicata* as embodied in S. 11 of the present Civil Procedure Code has no application.

The pleader for the applicant has not felt able to argue before me that S. 11 of the Civil Procedure Code bars the re-decision in 1913 of the question whether partition should be allowed, but he has urged, with very good reason, that there must be some finality about the orders of Revenue Officers and that it would be most inconvenient and improper if every one who had been disappointed over an application for partition were at liberty to start fresh proceedings over the same issue.

There is no doubt that this contention is correct. But the decision that S. 11 of the Civil Procedure Code has no application to the parti-

(1) 6 P. R. 1868. (Rev)

tion orders of Revenue Officers does not connote a decision that such orders will henceforth have no legal finality. Under S. 115 of the Land Revenue Act, a Revenue Officer has discretionary authority absolutely to disallow an application for partition : and he ought to use this authority in every instance in which the same question has been previously decided, unless it is shown that the circumstances which made the previous order appropriate have changed.

A very common instance of a change of circumstances affecting the propriety of a partition is the introduction into a village of a new means of irrigation : converting unculturable land into culturable land. But changes in methods of cultivation, whatever the cause, must always tend to carry with them changes in the manner in which land is held : and the recent discovery in the north-west of the Punjab that *barani* cultivation with profit is possible over extensive areas where it was formerly regarded as hopeless, is another instance of a change which may make it reasonable, and even necessary, to allow partition of areas where partition has formerly been disallowed.

In the present case I find that the refusal of partition in 1909 was based upon the belief that the point in dispute between the parties could, and would, be appropriately dealt with by action under S. 150 of the Land Revenue Act. It was supposed that Nathu the present applicant, was prepared to surrender certain land which was in his possession. His subsequent proceedings showed that this was not the case, for he obtained from a Civil Court a decree that he was entitled to retain possession of that land until partition should take place.

In the circumstances, I held that the officers who dealt with the application in 1913 were justified in declining to exercise their discretionary authority to disallow partition notwithstanding the opposite decision in 1907. I reject the application for revision.

Application rejected.

CURRENT
Punjab Case-Law
PART C.
Revenue Rulings
1915.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 110 of 1914-15. (Decided on 26-4-1915.)

Fenton, F. C.

Revenue.

KANWAN

Versus

Applicant

NATHU SINGH

Respondent.

Punjab Tenancy Act, S. 84 (5)—error of law—interference on revision justified.

Where the Lower Courts erred in not applying S. 5 (2) to the facts of the case and thus deprived a party of the benefit of an unrebutted presumption thereunder the Financial Commissioner on revision set aside the orders of the Lower Courts.

Revision forwarded by the Commissioner of Ambala Division, for orders of the Financial Commissioner.

ORDER.

The Commissioner's order of reference clearly shows that the lower Courts erred in not applying S. 5 (2) of the Tenancy Act to the facts of the case. The presumption given by that clause has not been rebutted so that the plaintiff Kanwan must be held entitled to occupancy rights under S. 5 (1) (a) in the 5 bighas 9 biswas to which the ejectment notice relates. I set aside the orders of the lower Courts and cancel the notice of ejectment explained. I decree costs to plaintiff in all Courts.

Petition allowed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 199 of 1914-15. (Decided on 13-8-1915.)

Fenton, F.C.

Revenue.

LAL SINGH *alias* LAL DIN

Versus

Applicant

MALUK SINGH and others

Respondents.

Punjab Land Revenue Act, S. 37—gift—properly attested—mutation to follow accordingly—death of donor—intricate question of

religion or customary law—duty of mutation officer.

Where a certain property was gifted away and the actuality of the transaction was amply attested, the mutation should be effected in favour of the donee, despite the subsequent death of the donor, giving rise to intricate questions of religion and customary law, with which a mutation officer is not concerned.

Revision from the order of the Commissioner, Lahore Division.

ORDER .

That the late Jawahar Singh gifted the land in dispute to Lal Singh *alias* Lal Din his son—whether legitimate or illegitimate matters not for present purposes—is a fact duly attested by the Naib Tahsildar on 22nd March 1914 and in pursuance of that attestation a mutation order ought to have been sanctioned at the time. Owing, however, to the machinations of a Patwari no action was taken until Jawahar Singh died and the case was then brought up afresh as one involving a mutation of inheritance.

The action seriously prejudiced Lal Singh's position and has led to discussion in the subsequent mutation proceedings of intricate questions of religion and customary law with which a mutation officer is not concerned. I see no reason why mutation should not now be effected in accordance with the gift, the actuality of which transaction is amply attested. The reversioners may sue in the Courts to have the gifts set aside as invalid, but until in such a suit they succeed in proving its invalidity the transaction must be treated by mutation officers as a valid one. I set aside the order of the Collector and restore that of Mr. Mangal Singh Assistant Collector, in Lal Singh's favour, except that the mutation should be treated as one of gift and not of inheritance.

Revision allowed.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate.

No. 2 of 1914-15. (Decided on 10-3-1915).

Revenue.

Diack, F.C.

LAKHMI DAS

Appellant

Versus

HAYAT and others

Respondents.

Punjab Alienation of Land Act, S. 9 (2) (3)—mortgagor denying execution—exercise of jurisdiction—Deputy Commissioner to decline.

If a case is referred to the Deputy Commissioner by a Civil Court under S. 9 (3) of the Act and if the mortgagor on appearing before the Deputy Commissioner denies execution of the mortgage or pleads payment of the mortgage-debt, the Deputy Commissioner must decline to exercise the power conferred on him by S. 9 (2).

Appeal from the order of the Commissioner of Rawalpindi Division.

ORDER.

In this case the holder of a mortgage deed of 1893, containing a

condition of conditional sale applied to the Deputy Commissioner, without first taking action under the Regulation of 1806, to exercise his power under S. 9 (2) of the Alienation of Land Act, and the Deputy Commissioner, without regarding the plea of the other side that the mortgage by conditional sale had been extinguished by subsequent mortgage deeds executed in substitution for it, directed the execution of a new mortgage in form (a) S. 6 of the Act. The learned Commissioner on appeal held that, in disregarding the plea, the Deputy Commissioner in effect decided a question which is within the cognizance of a Civil Court only and he accordingly decided that the Deputy Commissioner's order should be set aside. The mortgagee appeals from the order of the Commissioner on the ground that the question of the currency of the mortgage was one for the Deputy Commissioner to decide.

It has already been held in this office, however, though no ruling to that effect has been published, that the view taken by the learned Commissioner is right. The question arose in connection with a ruling of the Chief Court in 1906 that the functions of a Civil Court under Regulation XVII of 1806 are purely ministerial and that the Civil Court has no power to determine, on an application for the issue of a notice of foreclosure, whether the mortgage is or is not valid and subsisting, but has only to issue the notice to the mortgagor or make the reference to the Deputy Commissioner prescribed by S. 9 (2) of the Alienation of Land Act. This raised the question whether on such a reference being made the function of the Deputy Commissioner was also of a ministerial nature only or whether it was open to him to deal with objections to the validity of the mortgage. If it is not open to him to do so the result may be that a valid mortgage executed by the Deputy Commissioner under S. 9 (4) of the Act may be substituted for one that has been satisfied already or one that has never been valid at all. It was decided, however, by Sir James Douie on certain cases referred from the Rohak District that the function of the Deputy Commissioner is limited in the above manner and that the only matters which he may decide are the amount which may be reasonably allowed as due on the mortgage and the period of the new mortgage. If then a case is referred to the Deputy Commissioner by a Civil Court under S. 9 (3) of the Act and if the mortgagor on appearing before the Deputy Commissioner denies execution of the mortgage or pleads payment of the mortgage debt, the Deputy Commissioner must decline to exercise the power conferred on him by S. 9 (2). The Civil Court must, then, in exercise of its ministerial function under S. (8) of the regulation, issue a notice to the mortgagor informing him that the mortgage will be foreclosed if he does not redeem within one year. By raising a false plea before the Deputy Commissioner, a mortgagor loses the benefit of S. 9 (2) of the Act. But if his plea is genuine, then, as the notice issued by the Civil Court does not take effect

for one year the mortgagor has ample time to bring a civil suit for a declaration that the mortgage is invalid or has been redeemed.

So also when the mortgagee applies direct to the Deputy Commissioner under S. 9 (2) of the Act, without first applying to the Civil Court under the Regulation, and the mortgagor denies that the mortgage is in force, the proper course is for the Deputy Commissioner to decline to take action under S. 9 (2) and to leave the mortgagee to foreclose under the Regulation or sue in the Civil Court for the money due.

The appeal is rejected.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

Revenue.

No. 227 of 1914-15. (Decided on 19-8-1915)

Fenton, F.C.

SOHNA and another

Applicant

Versus

KHAWAJA and others

Other Side.

Punjab Tenancy Act, Ss. 4 (15), 5 (1) (d)—Muafi granted for the maintenance of a khangah—whether a jagir within the meaning of.

The assignee enjoying a muafi granted for the maintenance of a khangah is not a jagirdar within the meaning of Ss. 4 (15) and 5 (1) and is excluded from that definition as being a village servant.

Revision from the order of the Commissioner of Rawalpindi Division.

ORDER.

Fenton, F. C.—The only question which I need consider among those raised by this revision application is whether the assignee enjoying a muafi granted for the maintenance of a khangah is a "Jagirdar" within the meaning of S. 4 (15) and S. 5 (1) (d) of the Punjab Tenancy Act, or is excluded from that definition as being a "village servant." The issue thus raised is clearly put in the following extract from the judgment of the learned Commissioner :—

"The principal point for decision is whether the persons in charge of this khangah, Haji Suleiman, are village servants. If they are village servants, then they are not "Jagirdars" as defined in S. 4 (15) of the Tenancy Act. I consider that there is great force in the line of argument put forward by Major Coldstream, in spite of the fact that in *Rattan Singh v. Fajju Shah* (1) a *takiadar* has been regarded as a muafidar or jagirdar, and that in *Dogar Mal v. Secretary of State* (2) an assignee of land revenue for the maintenance of a *thakardawana* was granted occupancy rights under S. 5 (1) (d) of the Tenancy Act. As regards the first ruling, which was under the old Act, I would note that the term jagirdar was not defined in the old Tenancy Act, XXVIII of 1868. The point as to whether

(1) 12 P.R. 1878.

(2) 4 P.R. 904 (Rev).

the *takiadar* was a village servant, and as such not 'entitled to the status of a jagirdar in claiming occupancy rights was not discussed. In P. R. 4 of 1904 (2) the proprietor of the land was the Crown, and here again the point now in issue was not discussed. The position of Government as a proprietor of land in respect of a *thakardawara* in its estate would perhaps be somewhat different from that of the private proprietors of a village in respect of a *khangah*.

"Taking the present case on its merits, the *mujawars* were required to keep the *khangah* in repair and to serve travellers, giving them a smoke and water and generally attending to their needs. It was in return for this service that the village proprietors gave them certain land rent free as regards cash or payment. But the land was not actually rent free, as the rent was a service rent. I am strongly of the opinion that the *mujawars*' status was that of the servants of the village proprietors. These felt bound to arrange for the discharge of certain offices at the *khankah* and they employed the appellants for this purposes. I agree, therefore, with Major Coldstream that these *mujawars*, the appellants, were servants of the village proprietors and that they do not possess the status of jagirdars under S. 4 (15) of the Tenancy Act."

Of the two judgments cited by the Commissioner, the first, No. 12 P.R. (Civil) of 1878 (1) may be disregarded, because under the Tenancy Act of 1868 *muafidars* who were village servants were not excluded from the definition of "jagirdar." It is true that in No. 4 P.R. Revenue of 1904 (2) the assignee of land revenue for the maintenance of a *thakardawara* was granted occupancy rights under S. 5 (1) (d), but as noticed by the Commissioner, the point was not discussed whether a person in that position could be regarded as a "village servant." In addition to the reasons given by the Commissioner for distinguishing the case from the present it may be mentioned that the claimant to the status of jagirdar in 1904 was a descendant of the original founder of the *thakardawara*.

The real point in the present case is whether service of a religious or quasi-religious character, such as that performed by the custodians of a village *khangah*, is to be regarded as bringing the persons responsible for such service within the category of "village servant," so as to exclude them from the definition of "jagirdar." I have no hesitation in accepting the views of the Collector and Commissioner on this point. When the present Tenancy Act was under consideration as a Bill, the Lahore Committee, appointed to revise and re-draft the Bill reported as follows with reference to the definition of "jagirdar" :—

"The words 'other than a village servant' have been inserted because small assignments have often been made to priests and menials in consideration of village service, and we do not consider such persons to be equitably entitled to rights of occupancy in plots so held by them."

This seems conclusive. The *muafi* in the present case was originally granted by the zamindars of the village for the service of the *khangah*. I must hold that the defendants Sohna and Allah Lok are "village servants"

and as such are not entitled to be treated as "jagirdars" or ex-jagirdars for the purpose of S. 5 (1) (d) of the Tenancy Act.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 90 of 1914-15. (Decided on 18-12-1915).

Fenton, F.C.

GURU DUTT and others

Appellants

Versus

DR. KARTAR SINGH

Respondent.

Punjab Colonization Act, S. 15—not retrospective—instalment purchaser—balance of interest due from ex-tenant—right of former.

S. 15 of the Punjab Colonization Act is not retrospective; hence it does not deprive an instalment purchaser before the date of coming into force of the Act of a right of property already acquired, merely because there was a small balance of interest still due from the ex-tenant to Government.

Appeal from the order of the Commissioner, Multan Division.

ORDER.

The contention of the appellant is that mutation should not be sanctioned to give effect to a transaction of sale when the vendor was a person who was not empowered to sell without the sanction of the Financial Commissioner, as required by S. 8 of the Government Tenants Act, 1893, corresponding to S. 19 of the Punjab Colonization Act of 1912. If at the time of the sale the vendor was a tenant of Government then undoubtedly the sanction of the Financial Commissioner was necessary. The contention of the respondent, however, is that, at the time of the sale in 1912, the vendor was no longer a tenant but was proprietor. The facts on record as to this are clear. When the sale took place the tenant had paid up to Government all the instalments of the purchase-money requisite for the acquisition of proprietary rights. The only doubtful point is concerned with the fact that some Rs. 500, on account of interest of delayed instalments, were subsequently found to be due to Government and though this balance was on discovery promptly paid up the question arises whether under S. 15 of the Colonization Act, 1912, the tenant did not remain a tenant up to and until the date of the payment of this balance of interest. The Punjab Colonization Act did not come into operation until June 1912. Before that month the whole of the instalment of purchase price had been paid by the tenant to Government. Under the terms of clause 17 of the "Statement of conditions" applicable to the tenancy, proprietary rights had passed to the tenant on the payment of the first instalment, which was paid in 1910, and this statement of conditions was safeguarded and continued in force

by S. 14 of the Colonization Act, 1912. I am unable to hold that S. 15 of that Act operates with retrospective effect so as to deprive the instalment purchaser of a right of property already acquired merely because there was a small balance of interest still due from the ex-tenant to Government.

I must, therefore, hold that the sale transaction which is in dispute in the present case, was one in which the vendor had already acquired proprietary right in the property sold, and which accordingly did not need any sanction of the Financial Commissioner to validate it.

The appeal is dismissed with costs.

Appeal dismissed.

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IN THE COURT OF THE FINANCIAL COMMISISONER OF THE
PUNJAB.

Revision side.

Revenue.

No. 233 of 1914-15. (Decided on 28-10-1915)

Fenton, F. C.

KHADIM HUSSAIN KHAN

...

...

Applicant

Versus

M ST. MURAD BIBI

...

...

Respondent.

Limitation Act, Art. 120—suit for a share in the profits of an estate—Punjab Tenancy Act, S. 77 (3) (k).

A suit for a share in the profits of an estate or holding under S. 77 (3) (k) of the Punjab Tenancy Act of 1887 is not a suit for money received and consequently is governed by Art. 120 of the Limitation Act of 1908.

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

This is a suit by one co-sharer, Mst. Murad Bibi, against another co-sharer, Khadim Hussain, her deceased husband's brother, for her share of the produce of a joint holding for twelve harvests. The plaintiff has obtained a decree, the amount of which, as fixed by the appellate order of the Commissioner, is Rs. 6,000. This sum is decreed in respect of plaintiff's share of the produce of six years—twelve harvests. Both parties apply for

revision on the ground that the amount so decreed is too much or too little and that wrong methods of appraisal and calculation have been followed in fixing it. None of the arguments advanced in this connection, however, seem to me to establish any valid ground for exercising revisional powers. I shall confine myself, therefore, to the plea that the plaintiff's claim is barred by limitation in respect of the first three years of the period to which her suit relates. In other words it is contended that the period of limitation for a suit under S 77 (3) (k) of the Punjab Tenancy Act by one co-sharer for a share in the profits of a holding is three years. The Commissioner has held that the article of the first schedule of the Limitation Act which is applicable is article 120, (suits for which no period of limitation is provided elsewhere in the schedule), and that the period of limitation is six years. It is curious that there should be no Punjab ruling on this point. Suits by co-sharers for a share of the profits of an estate or holding are among the commonest of revenue suits. I believe that there has heretofore been a general impression that a three years' period of limitation is applicable to such suits as well as to suits for rent against tenants.

Mr. Fagan's decision that the period of limitation is six years is based on the Calcutta High Court ruling in *Watson and Company v. Ram Chand Dutt*. (1) In that case in which some of the co-sharers in property owned in common sued the remaining co-sharers, who had taken possession of and exclusively cultivated the joint property for mesne profits, it was urged on behalf of the defendant that either article 36 or article 115 of the first schedule of the Limitation Act was applicable. The Court, however, held that in the circumstances, i.e., when some co-sharers take exclusive possession of the joint property and manage it without associating the other co-sharers in the possession and management, there is neither misfeasance nor malfeasance nor breach of contract which would make articles 36 or 115 applicable. In the present case the defendant argued before the Commissioner that article 109 is applicable. Article 109 relates to suits "for the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant." The learned Commissioner rightly holds that the profits received by a co-sharer in possession are not *wrongfully* received merely because they belong in part to co-sharers who are not in possession. The ruling of the Allahabad High Court which he cites in support of this view, *Phani Singh v. Nawab Singh and others*, (2) is entirely to the point. It may be added that the relation of a co-owner, who obtains exclusive possession, to a fellow-sharer who is not in possession, is by S. 90 of the Indian Trusts Act, declared to be a fiduciary one. It cannot, therefore, be said that the receipt by the trustee in such circumstances of profits,

(1) 28 Cal. 799

(2) 28 All. 161

for which he is liable as trustee to render an account, is a wrongful receiving within the meaning of article 109 of the Limitation Act. In this Court the defendant seeks to establish the applicability of article 62 of the Limitation Act. Article 62 relates to suits "for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use." If the present suit were really one of that description it would not lie in the Revenue Courts. But it would be a straining of the law and of the ordinary meaning of language to hold that a suit for a share in the profits of an estate or holding under S. 77 (3) (k) of the Tenancy Act is a suit for money received by the defendant on behalf of the plaintiff. What is due to the plaintiff is only ascertainable after an account has been taken, an account in which the managing co-sharer is entitled to set off expenses of management before the proportion of the rents, paid by tenants under S. 15 of the Tenancy Act, which is due to the co-sharer who is not in possession, can be ascertained. This view is supported by the Allahabad High Court ruling in *Parsotam Rao Tantia v. Radha Bai and another*, (3) in which it was held that a suit by a co-sharer to recover from a manager of property in common ownership for money received by the defendant as manager was not a suit for "money had and received" but was one to which article 120 of the first schedule of the Limitation Act applied.

In the Rent Acts of Agra and Oudh there are general provisions declaring the applicability of the Indian Limitation Act to revenue suits arising thereunder except in the case of suits for which a special period of limitation is provided in those Acts. Such a special period of limitation, *viz.*, three years, is provided in both Rent Acts for suits by co-sharers for a share of the profits of a holding—a circumstance which involves the implication that the Limitation Act period for such suits is not one of three years.

For the foregoing reasons I am unable to dissent from the Commissioner's decision on this question of limitation, *viz.*, that article 120 applies to suits of the description for which S. 77 (3) (k) makes provision. On no other ground is there any reason to revise the order of the Commissioner. I accordingly reject the applications in both these cases (Nos. 233 and 254). Parties will pay their own costs in this Court.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

[Revision side.]

Revenue.

No. 11 of 1915-16. (Decided on 21-2-1915).

Diack, F. C.

LABHA

*Applicant**Versus*

TULSI and others

Respondents.

Limitation Act, Arts. 120 and 144—occupancy rights sold—
suit by the landlord for possession against the vendee—Punjab
Tenancy Act, S. 77 (3) (h).

Held, that a suit by a landlord to dispossess under S. 77 (3) (h), Punjab Tenancy Act, a person to whom the occupancy rights in a land have been sold is governed by Art. 120 of the Limitation Act and not by Art. 144 of the Act. 9 P. R. 1904; 135 P. R. 1888; 1 P. R. 1898 (Rev); 7 P. R. 1905 (Rev); 6 P. R. 1893 (Rev) referred to. 3 P. R. 1910 Rev. dissented from.

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

In this case the landlords (the proprietary body of the village) sued under S. 77 (3) (h), Punjab Tenancy Act, to dispossess a person to whom the occupancy rights in the land in suit had been sold. The Court of first instance and the first Court of appeal held that in respect of limitation the case was governed by article 120 of the 2nd schedule to Act XV of 1877, but the former admitted the case to a hearing on the ground that the right to sue accrued only from the date on which the mutation was sanctioned, which was less than six years before the institution of the suit, while the latter considered that time ran from the date of the registered deed of sale which was more than six years before institution and accepting appeal dismissed the claim. The second Court of appeal, that of the Commissioner, following the ruling *Har Lal v. Mussammatt Gohri* (1) held that article 144 of the schedule applied to the case and limitation being 12 years the case was within time and he referred the case back for disposal on the merits. The Commissioner, Mr. Fagan, in his judgment remarked as follows of the ruling quoted: "Whether the view of the Financial Commissioner taken in it is sound or not is not for me to say. If it is not, it is open to the Financial Commissioner to revise his former ruling." In admitting the case to a hearing on revision Sir Michael Fenton observed as follows:—

"I am inclined to think that Sir James Doaie's decision in No. 3 Revenue of 1910 is wrong and that article 144 does not govern limitation in suits by landlords to set aside alienation by occupancy tenants. The time from which the period begins to run under article 144 is 'when the

(1) 3 P. R. 1910 (Rev.)

possession of the defendant becomes adverse to the plaintiff'. Now the possession of the vendee of occupancy rights is possession as a tenant. It never can become proprietary possession so long as the tenant does not set up any claim to proprietorship. Accordingly I am inclined to hold that article 144 is applicable only when proprietary possession is concerned."

I have now heard counsel on the question but have heard nothing to lead me to doubt the correctness of the above view. It is urged that in certain contingencies the landlord may become entitled to possession, but that is certainly not the case here, as the decree of the Court of first instance shows, for it provides that defendants 2 and 3 the original occupancy tenants who sold their rights will not be affected but will get possession of the land. The position is very similar to that dealt with in *Asa Ram v. Paras Ram* (2) where a temple worshipper sued for the dispossession of the assignee of the temple manager and in which the Chief Court held that article 120 and not article 142 or article 144 was applicable. It is also urged that paragraph II of Standing Order 2 expressly lays down that in a suit like the present the plaintiff is entitled to a decree for possession. The object of the paragraph, however, is to make clear that the plaintiff is entitled to a decree against the alienee alone and not against the alienating tenants; in other words that he is not entitled to possession at all; and the word "possession" appears to have been used by inadvertence for "dispossession." In Revenue judgment No. 3 of 1910 (1) Sir James Douie considered that the mere fact of the word "dispossession" being used in S. 77 (3) (h) of the Tenancy Act and the word "possession" in article 144 of schedule II of the Limitation Act made no manner of difference. There is, however, the important difference that dispossession of the alienee does not necessarily involve the possession of the landlord. It was pointed out in that judgment that the above sub-section gives the landlord a choice between three kinds of suits, and it may be remarked that it would be anomalous if the period of limitation were not the same for each. If the suit takes the form of a claim to set aside the transfer it has been repeatedly held by the Chief Court in *Ram Chand v. Muhammad Khan* (3) and by this Court in *Jiwan Singh v. Maharaja Jagat Singh* (4) and *Kuria v. Nanak* (5) that article 120 applies. It is logical that the same article should apply to the alternative claim for dispossession of the alienee, and this supports the conclusion drawn from the argument that the disposes-

(2) 9 P. R. 1904.

(3) 135 P. R. 1888.

(4) 1 P. R. 1898 (Rev.)

(5) 7 P. R. 1905 (Rev.)

sion of the alienee does not necessarily involve the possession of the landlord. It is true that in the judgment of this Court reported in *Nihal v. Lakhta* (6) a decree for possession was passed in similar circumstances but that was a case in which the lower Court had decreed possession against both the occupancy tenants and the mortgagees and the whole intention of the Financial Commissioner's judgment was to modify the decree so as to make it operative only against the mortgagees. In other words it was for dispossession rather than possession. And the question of limitation of course did not arise.

Differing therefore from the decision in *Har Lal v. Mussammatt Gohri* (7) I hold that the present suit is governed by S. 120 and that the period of limitation is 6 years. And I agree with the first Court of appeal that the right to sue accrued from the date of the sale and as that was more than 6 years before the institution of the suit the claim is barred by limitation.

Accordingly I direct under S. 84 (5) Punjab Tenancy Act that the suit be dismissed. Parties to bear their own costs throughout.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 85 of 1914-15. (Decided on 7-5-1915).

Fenton, F. C.

VIR SINGH and others

Applicants

Versus

KALA SINGH

Respondent.

Punjab Government Tenants Act, S. 8—agreement to admit others to a share in tenancy—previous consent of the Financial Commissioner not obtained—agreement void—S. 23, Contract Act.

Where a tenant under Government admits others to a share in the tenancy without obtaining the Financial Commissioner's consent as is provided by S. 8, such an agreement is void from the start under S. 23 of the Contract Act. 10 All. 577 ; 12 Bom. 422 ; 7 All. 511 ; 7 All. 878 ; 20 All. 219 ; 30 All. 38 ; 8 P. R. 1913 (Rev.) referred to ; 58 P. R. 1913 (Rev.) disapproved.

Revision from the order of the Commissioner, Lahore Division.

ORDER

The defendant, Kala Singh, is tenant under Government of a colony grant of $1\frac{1}{2}$ squares in the Chunian Colony. The plaintiffs in this case, Vir Singh and Samand Singh, are his brothers. The plaintiff in

(6) 6 P. R. 1898 (Rev.)

(7) 3 P. R. 1910 (Rev.)

Revision Case No. 86 is a third brother, Chanda Singh. The facts in the two cases are the same and will be dealt with in one order.

The defendant, Kala Singh, associated his three brothers with him in the breaking up and cultivation of the land included in the Government grant. He now seeks to eject his brothers and the present suit is brought by the latter to have the notice of ejectment cancelled. The first Court decreed cancellation. The Assistant Commissioner of Kasur, exercising the powers of a Collector, accepted defendant's appeal and set aside the decree of the first Court. He also remanded the case to the first Court for a decision as to the amount of compensation on ejectment to be awarded to plaintiffs. The plaintiffs appealed to the Commissioner who declined to interfere with the Collector's order. They now apply to this Court on the Revision Side.

The plaintiffs, apart from a point as to the existence of the relationship of landlord and tenant between the parties, which will be dealt with below, rely chiefly on a deed of agreement executed in their favour by defendant shortly after the land had been allotted to the latter by the Colonization Officer.

The following is a translation of this deed of agreement which was executed on 8th July 1905:—

"I, Kala Singh, son of Amir Singh, caste Kambo Mutti, resident of Mauza Killa Ganja, Tahsil Chunian, do hereby declare that in chak No. 41 of Rakh Shaikhoo, I have been granted one square of land and half a square divided diagonally measuring about 58 ghumaons. I had promised to my full brothers Chanda Singh, Samand Singh and Vir Singh of Mauza Killa Ganja of the Chunian Tahsil that when I should be granted land by Government I would occupy one half of the grant and the other half would be occupied by all the three persons Chanda Singh, etc., I have now executed this deed of agreement to the effect that the said Chanda Singh, Samand Singh and Vir Singh will be considered as entitled to one half of the grant by the Government in the same way as I would be. In short, they shall pay all the cesses in respect of their half share and shall receive the produce thereof. I will not object to it in any way. If I should try to eject them for any reason the said persons will be at liberty to take from me their damages in respect of half the land at the rate of per ghumaon. I will have no objection to it. I have therefore executed this agreement so that it may serve as

authority. Dated 8th July 1905 corresponding to 25th Har Sambat 1962.

Witnesses—

(Sd.) Chuha, son of Kishen
of Khudian.

Thumb impression of Kala
Singh, aged 45.

(Sd.) Sham Singh, son of
Lal Singh of Khudian.

The Collector has held this agreement to be invalid with reference to the terms of the Government Tenants Act 1893, Section 8, which provides as follows :—

“The right or interest vested in a tenant by or under this Act shall not be capable of being attached or sold in execution of a decree or order of any Court or in any insolvency proceedings, nor shall they or any of them, without the previous consent in writing of the Financial Commissioner, be transferred or charged by any sale, gift, mortgage or other private contract.”

As no written consent of the Financial Commissioner was given to the alienation which the agreement of 8th July 1905 was intended to effect, Mr. Harcourt holds that it is invalid and cannot be recognised.

Now, if the case is to be governed by the ruling of the Chief Court in *Hussain Khan* versus *Jahan Khan* (1) it must be admitted that the agreement under consideration, in a suit between the parties to the agreement (Government not being a party) cannot thus be treated as invalid. In that case also section 8 of the Government Tenants Act, 1893, was pleaded as a bar, but Mr. Justice Robertson held that the agreement was valid and that as between the parties section 8 of the Act mentioned was no bar. It was added, however, that the decision was not binding upon the Financial Commissioner.

This ruling, if it is to be generally followed, will have a far-reaching effect. Not only in the Chunian Colony, but in the Chenab and Jhelum Colonies, and in the new Colonies of the Triple Canal Project, Government has created and is creating tenancies which are subject to the prohibition against transfer contained in section 8 of the Government Tenants Act, 1893, and the corresponding section (section 19) of the Colonization of Government Lands Act, 1912. The object and intention of such a prohibition are obvious. On the one hand colonists are selected individuals possessing certain qualifications. If

(1) 58 P. R. 1913.

a selected Colonist were, without permission, to transfer his land to a person not possessing the requisite qualifications, the policy governing colonization operations might be defeated. Again it is part of the policy governing colonization to allot holdings of a certain minimum size. The evils of small holdings in the more congested districts of the Province were very present to Government at the time it was decided to allot only in holdings of a fairly large size. In time sub-division of holdings will come in consequence of successions by inheritance, but this evil will be retarded for a generation or more if, to start with, the unit of allotment is a large one. A few exceptions occurring in the practical option of the foregoing prohibitions against transfer might not have any material effect upon the general policy, but it is obvious that a ruling such as that in *Hussain Khan* versus *Jahan Khan* (1) must stimulate transfers in contravention of the statutory provisions of the Acts of 1893 and 1912, and that upon the executive officers of Government will be thrown the invidious and burdensome task of stepping in and ejecting the alienees, who ought not to be in possession if the prohibitions against transfer contained in the two Acts are observed.

It becomes very necessary, therefore, to examine the grounds upon which Mr. Justice Robertson's ruling is based. The learned Judge refers to S. 23 of the Indian Contract Act, but he does so only in connection with a contention advanced in the suit before him that an agreement of the nature therein propounded was fraudulent. He did not notice the grounds mentioned in the same section which really operate to invalidate any agreement of the kind. S. 23 provides that every agreement of which the object or consideration is unlawful is *void*, and it further provides that the "object or consideration is unlawful if, *inter alia* :—

It is forbidden by law ; or

is of such a nature that, if permitted, it would defeat the provisions of any law ; or

the Court regards it as opposed to public policy.

The following illustration is appended to the section as a sample of an agreement which would "defeat the object of the law."

(i) "A's estate is sold for arrears of revenue under the provision of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A, upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law."

Now we are not without guidance in the rulings of the High Courts as to the scope and meaning of these clauses of S. 23 of the Contract Act which operate to safeguard the objects of statutory enactments. Agreements which have been held to be void under this section include a sub-lease of an Excise Contract (*Debi Prasad versus Rup Ram and others* (2)) a transfer of a share in an Excise contract (*Hormasji Motabhai versus Pestanji Dhanjibhai* (3)) a transfer of occupancy rights declared by statute to be non-transferable (*Durga and another versus Jhinguri and others* (4)) and *Kashi Prasad versus Kedar Nath Sahu* (5), and a transfer by a disqualified proprietor in contravention of S. 8 of the Jhansi Encumbered Estate Act, 1832 (*Radha Bai versus Kamod Singh* (6)). In all these cases the agreements were, in suit between transferees and transferors, held to be void as defeating the object of the law. It is impossible not to regard a transfer in contravention of S. 8 of the Punjab Tenants Act 1893 or S. 19 of the Colonization Act 1912 as void on similar grounds. On a similar ground I held in *Mohammad Nasir Khan v. Farid and others* (7) that an agreement providing for the sale of canal water in contravention of the provisions of Act VII of 1873 was void under S. 23 of the Contract Act.

In *Hussain Khan versus Jahan Khan* (1) Mr. Justice Robertson founds an argument on the analogy of transfers by occupancy tenants. But there is in reality no analogy. The Punjab Tenancy Act does not enact that transfers by occupancy tenants without the consent of the landlord shall be void. It only provides (S. 60) that such transfers shall be voidable. They are voidable only at the instance of the landlord. As between the parties, therefore, they hold good and are valid unless and until they are invalidated by the landlord. An agreement on the other hand of which the object is unlawful as explained in Section 23 of the Contract Act is void *ab initio*.

It is hardly necessary to notice the ruling in *Ali Mardan v. Bakar Khan* (8) which is referred to by Mr. Justice Robertson in *Hussain Khan v. Jahan Khan* (1). That ruling amounts to nothing more than that there is no special procedure open to the Revenue authorities, corresponding to Section 21A of the Land Alienation Act, whereby the Civil Appellate Courts can be moved by the Deputy Commissioner for the revision of a decree which gives effect to an agreement in contravention of Section 8 of the Government Tenants Act, 1893.

Holding, therefore, as I do, that the agreement of 8th July is void and was void from the start, it is necessary to determine the question as to the status of the parties.

Revision rejected.

- (2) 10 All. 577
- (3) 12 Bom. 422
- (4) 7 All. 511 and 7 All. 878 F. B.
- (5) 20 All. 219 (F.B.)
- (6) 30 All. 33
- (7) 8 P. R. 1913 (Rev)
- (8) 13 P. R. 1913.

CURRENT
Punjab Case-Law
PART C.
Revenue Rulings
1916.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 64 of 1915-16. (Decided on 5-8-1916).

Fagan, F.C.

LAKHI and others ..

Versus

Petitioners

AMAR SINGH and others ..

Respondents.

Punjab Tenancy Act, S. 5 (1) (c)—Settlement—along with the founder—meaning and scope of.

Settlement along with the founder, means settlement contemporaneously or in association with the original founder during the initial stages of the foundation and development of the village. But where a cultivator is shown to have commenced to reside in and to cultivate Shamilat land in a village during the life time of a founder thereof, such founder being at the time a Lambardar or otherwise directly concerned with the management of the Shamilat, the cultivator in question was settled in the village "by the founder thereof as a cultivator therein" and so far fulfils the requirement of S. 5 (1) (c).

Revision from the decree of the Commissioner of Ambala Division.

ORDER

I will deal with the three cases Nos. 64, 65 and 66 in one order as the facts with which the revision is concerned are the same in all of them. They are fully set out and discussed in the orders of the learned Commissioner, of the Collector and of the original Court.

The learned Commissioner came to the conclusion that Hazari was not settled as a cultivator in the village of Bobwa, that is to say, as I understand, that he did not cultivate land there but was engaged solely in carrying out whatever at that period may have been the duties of a patwari. There is of course no direct proof that he did

cultivate land. From an inspection of the Settlement Record of 1840 (the first regular settlement) it appears that the cultivating body of the village consisted of proprietor (*maliks*), *qadim kisans* and *toladars*. The last two terms are explained at pages 218, 229 and 230 of the Hissar District Gazetteer from which it will be seen that the *qadim kisan* was a proprietor of his holding without any share in the *shamilat*. The Settlement Record of 1840 contains no list nor register of cultivators, except one of *qadim kisans* and the name of Hazari does not appear on this. He and his appointment as patwari are expressly mentioned in the *wajib-ul-arz* of 1840 but nothing is said as to his having been given land to cultivate whereas had he been a cultivator it seems very unlikely that this fact would not have been alluded to. It is true that the word *be-dakhal* is used with reference to him but this is a somewhat slender foundation on which to rest the conclusion that he was a cultivator in addition to being a patwari. A good deal has been made of the fact that Hazari's recorded emolument only amounted to Rs. 2 per mensem, but it must be remembered that he was a *banya* by caste and as was customary with the patwaris of those days it is probable that he made money by trade and money-lending. It is true that in 1857 his son Nathu appears from the Settlement Record of 1863 to have been cultivating some 200 *bighas* or 150 acres as a tenant but this does no more than render it possible, that Hazari may have cultivated some or all of that area in his life-time and certainly does not amount to proof that he did so. On the whole I agree with the Commissioner as regards this part of the case, being of opinion that there is not sufficient material for a definite affirmative finding that Hazari was a cultivator in the village.

There remains the question whether Nathu in virtue of his having cultivated land in the village from 1857 or thereabouts, can be regarded as having been settled in the village by the founder thereof as a cultivator therein. Regarding this the facts are that, as appears from the Settlement Records of 1840 and 1863 A.D., Basti, son of Piru, one of those who joined in the original foundation of the village and who was therefore one of the joint founders, was alive as late as 1863. He was not a Lambardar. Basti who was one of the three persons who held that office was a son of Sham Das, one of the founders. The land which Nathu, son of Hazari cultivated in 1863 was village *shamilat* which, according to an entry in the *wajib-ul-arz* of 1863, was managed by the Lambardars in consultation with certain other proprietors who are mentioned by name but do not include Basti, son of Piru. It would appear, therefore, that Basti, son of Piru, had nothing to do with settling cultivators on the *shamilat* in 1863 and we may assume that the same was the case in 1857.

There are no published rulings as to the facts or circumstances which would for the purposes of Section 5 (1) (c) of the Tenancy Act constitute in the case of a tenant a settlement of him in a village by the founder thereof as a cultivator therein. Settlement along with the founder, the other alternative allowed by the above clause, doubtless means settlement contemporaneously or in association with the original founder during the initial stages of the foundation and development of the village—see *Atar Singh v. Diwan Singh* (1) Settlement by the founder, on the other hand, might take place after those stages had been passed. As to this, it is, I think, a fair presumption, rebuttable of course by adequate proof of facts inconsistent with or contradicting it, that where a cultivator is shown to have commenced to reside in and to cultivate *shamilat* land in a village during the lifetime of a founder thereof, such founder being at the time a Lambardar or otherwise directly concerned with the management of the *shamilat*, the cultivator in question was settled in the village “by the founder thereof as a cultivator therein” and so far fulfils the requirements of S. 5 (1) (c).

In the present case it appears that when Nathu, son of Hazari, began to cultivate *shamilat* land, Basti, son of Piru, the then sole surviving founder, was not a Lambardar nor did he share in the management of the *shamilat*. Under these circumstances the presumption which has been defined above is not applicable or rather would, if applied, be sufficiently rebutted. For these reasons I agree with the learned Commissioner's conclusion that it is not satisfactorily established that Nathu was settled in the village of Bobwa by one of the founders. The plaintiffs have, therefore, no claim to occupancy rights under S. 5 (1) (c). The petitions for revision are dismissed. Applicants will pay respondent's costs in this Court.

Revision dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 12 of 1915-16. (Decided on 24-5-1916).

Fagan, F. C.

SANT BHIM SAIN

Applicant

Versus

FAZAL

Other side

Mafidar—batai paid to him in the past by the cultivating owner—whether entitled to a share of produce.

Held, that no assignee of land revenue as such is entitled to land revenue in the form of a share of the produce nor is the mere receipt

(1) 94 P.R. 1880.

by him of such a share in the past sufficient to give him a title to such a share in the future. To secure the latter it is necessary that in addition to the position of mufidar or assignee his status should include certain element or incidents of proprietary rights or ownership explained in rule D.1, 3 I framed under the Land Revenue Act of 1871 on the analogous subject of the settlement of the revenue assessable on resumed assignments with the ex-assignees or their heirs. That subject is now dealt with in paragraph 183 of the Settlement Manual on the principles underlying the rules of 1871. 10 P. R. 1886 (Rev.); 4 P. R. 1887 (Rev.) 14 P. R. 1892 (Rev.) relied on ; 1 P. R. 1885 (Rev.) dissented from.

Revision from the decree of the Collector of Shahpur.

ORDER.

This is a suit by a mufidar against the recorded proprietor who is in cultivating possession for the value of one half share of produce claimed for Kharif 1912. The Courts below have decreed revenue only. The main question involved is that of the right of an assignee of land revenue to realize a share of produce, as opposed to the mere land revenue, from the area comprised in his grant. The question has been the subject of several published revenue rulings:—

Punjab Record No. 1 of 1885.

„ „ „ 10 of 1886.

„ „ „ 4 of 1887.

„ „ „ 2 of 1889.

„ „ „ 14 of 1892.

The circumstances of the *muafi* are as follows:—

It was originally granted about 1828 A. D. by Maharaja Ranjit Singh to one Brahmū Sant "*ba. sigha dharamarath aur ba iwaz puja path.*" On enquiry after annexation in 1849 the mufidar was found in possession and the grant was accordingly confirmed for life. On his death it was resumed by order dated the 12th August 1862, but was again released on 8th June 1863 in favour of his son Bhim Sain the present plaintiff. The grant appears to have been continuously enjoyed up to the present.

In the *khewat* of the Settlement of 1853 the entry in the ownership column was "*mufidar Brahmū Sant aur milkiat hasb aur zamin zamindaran deh ki hai.*"

In the Settlement Record of 1853 the mufidar's name does not appear in the ownership column but in the remarks column we find *mufidar batai kar leta hai aur babat haq zamindaran ser man malik ko deta hai. Taraddud chob chakal waghaira zimme mufidar hai.*" In the standing record of 1892 the mufidar's name appears in the rent column thus:—*Yafatni mufidar batai ba hissa nisf bila bhusa bad minhai kharch kamian.*" This entry is repeated in the standing record of 1911-12.

In 1857 it appears that some proceedings took place between the predecessors of the parties in which the question of the mufidar's right to a share of the produce was raised. The area involved was apparently at that time *shamilat* and the lambardar of the village while admitting that for a long period the mufidar had realised a share of produce claimed that in future he should be restricted to a cash rate. By a *robkar* of the Settlement Superintendent, dated the 12th October 1857, the claim was dismissed and the mufidar's right to a share of produce maintained, a *hagg lambardari*, however, being allowed to the plaintiff. In 1863 again the mufidar appears to have obtained a decree for produce.

The origin of claims on the part of mufidars to realize a share of produce such as the one which is advanced in the present case is to be found in the circumstance of revenue administration under Sikh rule. At that epoch the State broadly speaking took as its revenue the share of the produce which was left after deducting what was sufficient to maintain the cultivator on not too liberal a scale. The more or less customary or traditional division on this basis was half produce for the State and half for the cultivator. Except for certain minor dues, some of them of a quasi-proprietary nature, little or nothing was left for any third party or middleman. The State revenue in short was approximately the equivalent of what has now, in consequence of the limitation of the State demand under British administration, become the rent or landlord's share of the produce. It follows of course that when the Sikh administration granted any assignment it granted for the enjoyment of the assignee what would now be called not revenue but rent, the latter in fact being never less than double and oftener a larger multiple of the cash revenue assessed or assessable. I have gone into this matter and also into the history of the case at some length as the main question involved is one of considerable importance and has not, I think, been considered from the proper point of view by the courts below.

In the rulings already quoted that question arose in the form of claims by proprietors who had previously been paying to assignees a share of produce, the equivalent of the Sikh revenue, to pay in lieu thereof a cash revenue to be assessed at the authorised rates. In the present case the assignee sues to recover, in accordance with previous practice, a share of produce from the proprietors who, on their side, plead liability for cash revenue only. Turning to the previous decisions, the general result of *Baba Tej Nath v. Mul Raj* (1). (Colonel Davies, Financial Commissioner) was that a mufidar who had taken his dues by *batai* for two or three generations was entitled to continue to do so. Colonel Wace, Finan-

(1) 1 P. R. (Rev.) 1885.

cial Commissioner's views were somewhat different. The interpretation of his decision in *Sain Hashim Ali v. Fattah Haidar Shah* (2), as applied to the circumstances of the present case, would appear to be that no assignee of land revenue as such is entitled to land revenue in the form of a share of the produce, nor is the mere receipt by him of such a share in the past sufficient to give him a title to such share in the future. To secure the latter it is necessary that in addition to the position of mafidar or assignee his status should include certain elements or incidents of proprietary right or ownership explained in rule D. I, 3 I, framed under the Land Revenue Act of 1871, on the analogous subject of the settlement of the revenue assessable on resumed assignments with the ex-assignees or their heirs. That subject is now dealt with in paragraph 183 of the Settlement Manual on the principles underlying the rules of 1871. It was, further, held in the above ruling that if the owner was in cultivating possession of the land concerned the mafidar would not be entitled to a (sub)-settlement; as a result of which he would of course have no title to take a share of produce from the cultivating owner. The subsequent rulings which I have quoted proceeded generally on the same principles as those indicated above; see especially *Jawahir Singh v. Torra* (3) and *Nandu v. Malla Singh* (4).

In this case the courts below have apparently proceeded on the simple principle that a mafidar or assignee as such not being a proprietor can under no circumstances be entitled to a share of produce. It is however possible, as appears from the rulings quoted above, that, at all events so long as an assignment of land revenue continues, the proprietary right or rights of ownership may be divided between the assignee and the recorded proprietor in such wise that though the proprietor or his heirs may be entitled to an ultimate reversion the assignee is for the time being entitled to a share of produce as rent from the cultivator. The learned Commissioner, if I understand him rightly, would hold that a proprietor can under no circumstances pay rent; but this is scarcely correct as a universal proposition, e. g., it is quite possible that a proprietor should hold land and pay rent as a tenant-at-will under his own occupancy tenant or under his own mortgagee, who would then be in the position of a landlord.

The real question for decision in this case is whether the plaintiff has any proprietary interests in the land in suit of the kind explained in paragraph 6 above. No issue was framed on this important point and no definite enquiry has been made. There is, however, a certain amount of material on the record which tends to

(2) 10 P. R. (Rev.) 1886.

(3) 4 P. R. (Rev.) 1887.

(4) 14 P. R. (Rev.) 1892.

indicate that the plaintiff has such interests. I refer more especially to the proceedings of 1857 and 1863 and to the fact that he has been taking a share of produce for the long period which has since elapsed. On the other hand, the owner, the defendant, is in cultivating possession, but it is not quite clear for how long this has been the case and whether his possession has been uninterrupted. From the *Jamabandi* of 1901 which has been called for it appears that in that year the assignee leased the land to one Hukam Chand Arora. Under the circumstances it is, I think, necessary to return the case to the Collector for an enquiry and finding on the following points:—

- (1) Has the assignee, the plaintiff, any proprietary interests in the land in suit of the kind specified in Punjab Record 10 of 1885?
- (2) Has he at any time ejected tenants, or admitted new ones?
- (3) Since when has the defendant, the owner, been in possession without interruption?
- (4) Since when has he paid a share of produce to the assignee and has that share been a uniform one or has it varied?

The return to this order should be made by July 1st.

The final judgment of the learned Financial Commissioner was as follows:—

Fagan, F. C. (13.7.1916)—A return to my order of 24th May 1916 has been received. On issues (1) and (2) the findings of the Assistant Collector are against the plaintiff. On issue (3) it is found that the defendant has been uninterruptedly in cultivating possession since 1862 and on issue (4) that *batai* has been more or less regularly paid by the defendant since that date. I accept the above findings. It follows that the plaintiff is not entitled to realise a share of produce from the defendant. The application for revision is accordingly dismissed. The applicant will pay the respondent costs in this Court.

Application dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

No. 139 of 1915-16. (Decided on 9-8-1916).

Revenue.

Fagan, F. C.

LABHU ..

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.. *Petitioner*

Versus

HAMIRA ..

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.. *Respondent*

Punjab Tenancy Act, S. 53—Sub-Ss. (3)(5) —occupancy tenant—
locus poenitentiae, under—if entitled to withdraw proceedings prior to
completion of purchase by landlord.

The terms of S. 53 (3) do not deprive the occupancy tenant of a locus poenitentiae and it is open to him to withdraw from the proceedings at any time prior to the completion of the purchase as determined by S. 53 (3).

Case forwarded by the Commissioner of Jullundur Division.

ORDER.

Fagan, F. C.—The respondents are occupancy tenants under S. 5 of the Punjab Tenancy Act. The Commissioner's view, expressed in his order of 29th March 1916, as I understand it, is that the landlord after service on him of a notice under S. 53 (2) has in virtue of S. 53 (3) a vested right to purchase the occupancy tenure which cannot be defeated or determined by the tenant withdrawing from or abandoning his intention to transfer, as he appears to have done in this case on 21st November 1913. After full consideration I do not think that such an interpretation can be placed on the words "may claim" in S. 53 (3). To do so would be equivalent to holding that an occupancy tenant under S. 5 cannot take the steps required by S. 53 towards making a temporary alienation of his occupancy rights without running inevitably the risk of having those rights extinguished *in toto* and in perpetuity by the action of the landlord. I do not think that this can have been the intention of the Legislature, especially in view of the fact that if the occupancy tenant under S. 5 chooses to effect a mortgage otherwise than after observance of the requirements of S. 53 the only result would be that the mortgage could be set aside under S. 60 on the suit of the landlord without forfeiture or extinction of the occupancy rights. He would thus be in a better position than the tenant who obeyed the law, as laid down in S. 53, if the interpretation from which I dissent is to be accepted. Again, the procedure prescribed in S. 56 for occupancy tenants other than those under S. 5, who may desire to transfer their rights, involves no such risk, as under the above interpretation, attaches to the occupancy tenant under S. 5. I hold therefore that the terms of S. 53 (3) do not deprive the occupancy tenant of a *locus poenitentiae* and that it is open to him to withdraw from the proceedings at any time prior to the completion of the purchase as determined by S. 53 (5). It appears that as already remarked the occupancy tenant Hamira did in fact withdraw on 21st November 1913 and the Assistant Collector then quite correctly filed the case. The Collector re-opened it on appeal apparently at the instance of one of the landlords who had not agreed to the stoppage of proceedings. As a matter of fact no consent on his part was necessary. Under the circumstances the correct order for me to pass is to set aside all proceedings after 21st November 1913 and I, therefore, direct accordingly. The order of the Assistant Collector dated 5th August 1915 is clearly quite incorrect and quite inapplicable to the case. If the occupancy tenant does not withdraw the landlords are entitled to purchase at the price fixed and cannot be put off with a mortgage of the occupancy rights. It is fair that the present petitioner should pay all costs incurred by the occupancy tenant after 21st November 1913.

Order accordingly.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings.

1917.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 83 of 1916-17. (Decided on 7-5-1917).

Maynard, F. C.

CHANDA SINGH AND OTHERS.

Petitioners

Versus.

JIWAN SINGH AND OTHERS.

Respondents.

Punjab Tenancy Act, S. 59 (3) and (4)—Vendees of occupancy rights cultivating jointly—one of the vendees dying—survivorship—extinction.

Where vendees of an occupancy right held the holding jointly and no partition had taken place between them, held, that the landlord was not entitled to possession of the share of the dying vendee by extinction of the occupancy rights in that share, because the tenancy as a whole continues, as against the landlords, to be the property of the surviving tenants.

86 P.R. 1883; 56 P.R. 1887; 109 P. R. 1894; 6 P. R. 1902; (Rev.) referred to

Revision from the order of Commissioner, Jullundur.

ORDER.

I have heard Pandit Sheo Narain, for the applicants and Mr. Badr ud-Din Qureshi, for the respondents.

Bishan Singh and Karam Singh bought the occupancy rights in an area of some 62 *bighas* for Rs. 600. The deed says that they made the purchase in equal shares. The same phraseology is employed in the mutation sheet and in subsequent Records of Rights. They held jointly, and cultivated partly in common and partly separately.

Karam Singh died without issue in July, 1914. Before his death, he executed a deed of gift (which is certainly invalid, having been made without consent of the landlord) in favour of the sons of Bishan Singh (who was already dead, and on whose death mutation of his rights had taken place in favour of his sons). In this deed the land gifted was described as "32 *bighas* 1 *biswa* my own share, of 64 *bighas*, 3 *biswas*, that is to say, 62 *bighas* 12 *biswas*, occupancy and 1 *bigha*, 11 *biswas* non-occupancy."

The landlords sued for possession of 31 *bighas*, 6 *biswas*, on the ground that the occupancy rights in this area have been extinguished by the death of Karam Singh without heirs. They have been unsuccessful up to the Court of Commissioner, who held that it was for them to prove that the tenancy was not a joint one, that they had failed to do so, and therefore that the Collector's finding that the sons of Bishan Singh succeed by right of survivorship must be upheld. Against this order they apply for revision.

It has been very strongly urged before me that the effect of the ruling given by the Commissioner, upholding the Collector in this case, must be to debar the sons of an occupancy tenant, who held his tenancy jointly with a brother or other relative or relatives, from succeeding to their father's share in the tenancy on his death. A ruling was at one time given by the Punjab Chief Court in *Ahmad Din v. Haji* (1) laying down the principle that in a joint tenancy each tenant is the heir of the other, to the exclusion of other heirs. This came under discussion by the Full Bench in *Mohru v. Mutsaadi* (2), and Rivaz and Roe, JJ., observed that the principle thus laid down, if pushed to its logical conclusion, would exclude the sons of the joint tenant. Mr. Justice Roe reviewed the former decisions and pointed out that what they had really affirmed was something very different. It was that *as regards the landlord*, the joint tenants of a holding, even though it was not held by a common ancestor, are to be regarded as a single tenant, and that as long as any of them or the descendants of them survive, the landlord cannot claim the share of any tenant whose line has died out. Ruling *Ahmad Din v. Haji* (1) was overruled.

The explanation thus given in 1894 of the principle underlying that series of rulings from 1868 onwards by which the survivorship rights

(1) 66 P.R. 1887.

(2) 109 P.R. 1894 (F. B.)

of joint tenants of occupancy land were asserted *against the landlord's claim* to re-entry upon the death of one them, without affecting the rule of succession to the undivided shares of the tenants and their heirs *inter se* was adopted by Sir C. L. Tupper, in revenue judgment, *Agar Singh v. Dhana* (3). In all the subsequent rulings of the Punjab Chief Court and of the Allahabad and Calcutta High Courts which have been cited before me by the Counsel for the applicants, I have not found any departure from the principle. It is true that the Courts habitually describe joint tenancy as an estate of a highly technical nature, involving conceptions peculiar to English conveyances, and that they show themselves averse from recognizing its existence except in a joint undivided Hindu family; but in taking this attitude they are always dealing with the rights of so-called joint tenants and their heirs *inter se*, and it has never been the approved view of the Punjab Courts that joint tenancy, in this special and highly technical sense, exists occupancy tenants in this Province. It is perhaps unfortunate that the same phrase which describes the technical estates known as joint tenancy to English conveyancing should be employed, for lack of a more appropriate form of words, to characterise that condition of undivided enjoyment of an occupancy tenancy which, under Punjab Tenancy Law, operates to prevent a landlord from claiming possession of a share in such a tenancy on the death of one of the undivided tenants. They must be understood to be two different things.

In these circumstances I am not concerned to distinguish between a joint tenancy and a tenancy-in-common. The facts in this case are that the tenants are described in the Records of Rights as tenants *ba hissa-i-brabar* in equal shares, that similar language was employed in the deed of sale by which they obtained the tenancy and that they cultivated partly separately and partly in common. The entry of shares in a deed when one of the parties consists of more persons than one is a mere piece of bond-writer's routine, having no significance except that the persons concerned will claim to divide the right concerned in certain stated proportions if ever they do divide them. The action of the revenue officials, who prepare a mutation sheet and thereafter incorporate the attested mutation in the Records of Rights is taken under the executive instructions which require them to state shares: and the significance of such recorded shares is that they are an indispensable guide when partition is claimed, not that there is already any sort of division between the interests of the co-sharers. As to the cultivation of the

(3) 6 P. R. 1902 (Rev.); 11 P. L. R. 1903.

land partly separate and partly in common, that is, an inevitable sequel of particular agricultural conditions, the location of particular fields or the requirements of a particular crop or a particular type of cultivation: and the fact that part of the land was sometimes cultivated separately (this was so in 1898-99 but not 1900-1901) in no way affects the status of the tenants in their relations to the landlord, being purely a matter of convenience and varied from time to time as such.

In civil judgment *Bhorta v. Bhoru* (4). Rattigan, J., distinguished between what he there called a joint tenancy and a tenancy-in-common, for the purpose of deciding whether a particular holder at a particular time was "joint" in the following manner. "In a joint tenancy for the cultivation of land," he wrote, "it would be impossible to predicate what particular portion of the undivided land which formed the subject of the tenancy appertained to each tenant" Smyth, J., who concurred in the decision, observed that the tenants "held the land jointly. All three of them combined, and not either of them singly, constituted the tenant of the entire holding, and, *partition not having been affected*, had an interest in the whole." Sir C. L. Tupper, in the judgment of 1902, already cited, made actual and effective partition the test by which the claim of a tenant to succeed by survivorship, as against his landlord's claim to re-entry upon the decease of a co-sharing tenant, was to be judged: and this is the rule to be followed in the present case. Bishan Singh and Karam Singh were co-sharers in the acquisition of the tenancy, and they and Bishan Singh's sons, after Bishan Singh's death, were co-sharers in the enjoyment of it, whether technically "joint" or "in common" is a question which I am not here concerned to decide. No partition between them ever took place. That they were contingently entitled to particular specified shares in the event of a partition taking place, in no way affects their status. That they sometimes but not invariably, cultivated separate plots is also a matter of no significance, because it is a matter of ordinary cultivating routine. The landlord is not entitled to possession of Karam Singh's share upon the death by extinction of the occupancy rights in that share, because the tenancy as a whole continues as *against the landlord*, to be the property of the surviving tenants.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB

Revision Side.

Revenue.

No. 11 of 1915-16. (Decided on 8-5-1917.)

*Maynard, F. C.*POKHAR DASS.....*Petitioner**Versus*AMIR AND OTHERS.....*Respondents.*

**Punjab Tenancy Act—S. III—Landlord and tenant—right of tenant
to cut trees—Mauza Fatehpur.**

The entries in the administration papers of the village Fatehpur, Tahsil Gugera, make it plain that the trees growing on the land of an occupancy tenancy are not the property of the occupancy tenants; but they may cut them in order to supply themselves with agricultural implements with the consent of the landlords—a consent which must not be withheld without reasonable cause. 2. P. R. 1908 (Rev.) followed.

Case forwarded by the Commissioner, Multan.

ORDER.

I have heard the counsel for both parties. The applicant, occupancy tenant, sued the landlords for the price of a *kikar* tree cut and removed by the latter from the land of the occupancy tenancy. The claim was rejected by the Assistant Collector and by the Collector on appeal; but the Commissioner forwards the proceedings for revision on the grounds that the decision is opposed to the general principles governing the rights of landlords and tenants in trees; and that it involves the inference that a landlord is at liberty to enter the holding of an occupancy tenant and cut down all the trees.

The decision that a tenant is not entitled to recover from his landlord the price of a *kikar* tree cut by the latter, does not, in fact, involve the inferences which are above suggested. A tenant may be entitled to prevent a landlord from cutting a tree on the ground that the cutting of it would deprive him of wood required for agricultural implements or of other conveniences, such as shade for his cattle, to which he is entitled as tenant; and he may be able to enforce this right by a suit for an injunction, and yet he may have no claim whatever to the price of the tree. Again, he may have a right to prevent the landlord from cutting an undue number of trees, when he would have no right whatever to prevent him from cutting one only, on the ground that cutting, when carried beyond a certain point, would deprive him, the tenant, of the means of exercising the right to take wood for agricultural implements.

The entries in the administration papers of the village of Fatehpur, *Tahsil Gugera*, make it plain that the trees growing in the land of an occupancy tenancy are not the property of the occupancy tenants. But that they may cut them in order to supply themselves with agricultural implements, with the consent of the landlords; a consent which, on the principle laid down in *Subhan v. Niamat Khan* (1) must not be withheld without reasonable cause. There is doubt that *Mst. Gur Devi v. Sondha* (2) is applicable to occupancy tenants at *Mauza Fatehpur* and that the proprietor is not entitled, in the absence of reliable evidence as to his right either by custom or otherwise, to enter upon the land in the occupation of of a hereditary tenant, and cut and sell the trees growing thereon without the said tenant's consent; but this only means that the tenant is entitled to be safe-guarded in the exercise of certain rights of user, not that he can claim the price of a tree which the landlord has cut. Whether the legal position would be different if the trees cut were a fruit tree is a question which I need not discuss in the present case where only a *kikar* tree is concerned.

It has been urged before me, on behalf of the applicant, that *Ganga Ram v. Mahni* (3) dealt with facts virtually identical with those of the present case, and that in the case referred to, the Financial Commissioner upheld a decree giving to the tenant a share in the price of certain trees cut down by the landlord. It seems to be true that the decree which was upheld actually awarded a portion of the price to the tenant. But the question, whether a right to prevent the landlord from cutting trees on an occupancy tenancy necessarily involves a right to a portion of the price of the trees so cut down, is nowhere touched upon in the judgment, and the Financial Commissioner does not appear to have adverted to this aspect of the case. What the judgment makes quite clear is that a landlord is not entitled to cut down trees on a tenancy held by an occupancy tenant without the consent and contrary to the interest of the tenant. This principle is fully applicable, as has already been stated, to *kikar* trees standing upon the lands of occupancy tenants at *Mauza Fatehpur*.

As observed by the Collector, it was never urged by the plaintiff that the loss of the one *kikar* tree cut by the landlord was in anyway prejudicial to his agricultural interests. If he had alleged and proved this, he might have been entitled to an award of damages for the injury done, and he might have been entitled to an injunction against the landlord. But he is not the proprietor of the tree and he is not entitled to the price of it or to any portion of the price.

Application disallowed.

(1) 2 P. R. (Rev.) 1908 : 4 P. W. R. (Rev.) 1908.

(2) 61 P. R. 1881.

(3) 9 P. R. 1904 (Rev.) : 45 P. L. R. 1905.

SULTAN *v.* LAKHU RAM. 7
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

No. 1 of 1915-16. (Decided on 22-12-1916)

Revenue.

Fagan, F. C.

SULTAN

Appellant.

Versus.

LAKHU RAM

Respondent.

(i) Punjab Alienation of Land Act, S. 6 (1) (a)—Suit for redemption under S. 7—powers of Deputy Commissioner to determine what is due.

Under S. 7 (3) of Punjab Alienation of Land Act (13 of 1900) it is not only open to the Deputy Commissioner to enquire into and to consider the extent to which the principal sum together with reasonable interest thereon has been realised by the mortgagee from the rents and profits of the land held under the mortgage, but he is in fact required to do so. If he finds that the principal sum secured together with reasonable interest allowable under S. 6 (1) (a) is more than liquidated, it is open to him to grant redemption without any further payment by the mortgagor.

(ii) Punjab Alienation of Land Act, S. 7 (3)—power of Deputy Commissioner.

The words "such proportion of the mortgage debt as the Deputy Commissioner determines to be equitable" used in S. 7 (3) of Punjab Alienation of Land Act are wide, and confer upon him a correspondingly wide equitable power. They certainly do not restrict him in the exercise of his power under the section to a mere arithmetical consideration of the elapsed portion of the term of the mortgage.

Appeal from the order of Commissioner of Multan.

ORDER.

The facts of this case will be apparent from the orders of the Collector and of the Commissioner. Briefly they are that the appellant, Sultan, transferred 194 *kanals* to Lakhu Ram, respondent, by a mortgage under S. 6 (1) (a) of the Alienation of Land Act on the 15th August, 1911. The principal sum secured was Rs. 800. Sultan applied under S. 7 (3) of the Act for redemption without any payment to the mortgagee. The Collector by his order of 26th August, 1915, allowed the application finding that the mortgagee's net profits for the period during which he had been in possession under the mortgage apparently four years, had been Rs. 1,600 or Rs. 400 per annum and that consequently the principal sum secured together with any reasonable interest allowable under S. 6 (1) (a) had been far more than liquidated.

The learned Commissioner's view of the intention of the legal provisions contained in S. 7 (3) of the Act in their bearing on this case is given in

his order of 5th November, 1915. It is that the word "proportion" as used in the above section "implies that the amount to be paid in redemption is proportionate to the expired and unexpired part of the term of the mortgage. He holds, I understand, that no consideration either need, or should, be given to the net-profits actually received by the mortgagee during the expired portion of the term of the mortgage for which he has been in possession. After careful consideration I find myself quite unable to accept this view. The words "such proportion of the mortgage debt as the Deputy Commissioner determines to be equitable" used in S. 7 (3) are wide and confer upon him a correspondingly wide equitable power. They certainly do not appear to me to restrict him the exercise of his power under the section to a mere arithmetical consideration of the elapsed portion of the term of the mortgage. It is, I think, quite clear that it is not only open to the Deputy Commissioner to enquire into and to consider the extent to which the principal sum together with reasonable interest thereon has been realised by the mortgagee from the rents and profits of the land held under the mortgage but that he is in fact required to do so. The inclusion in the account of a charge for reasonable interest in addition to repayment of principal against such rents and profits is not, I think, inconsistent with S. 7 (1) of the Act. The meaning of that provision is, I consider, that no balance of interest can under any circumstances remain as due or recoverable after the expiry of the stipulated term of the mortgage and it is thus not inconsistent with, but on the contrary indirectly affirms, the provisions of S. 6 (1) (a) so far as the latter refers to the subject of interest.

For the above reasons I consider that the principle on which the Collector proceeded in his order of 26th August, is correct and I observe that the learned Commissioner himself in his subsequent order of 12th February, 1916, apparently failed to apply the principle enunciated in his own order of 5th November, 1915. I am, however, disposed to think that the Collector's estimate of Rs. 1,600 as the total "rent and profits," received by the mortgagee in four years is excessive. It is equivalent to Rs. 400 per annum on an area of 194 *kanals* or 20 acres, that is, to Rs. 16-8-0 per acre while the land revenue assessment is apparently only Rs. 1-2-0 per acre. This part of the case therefore seems to require further enquiry.

I set aside the Commissioner's order of 12th February, 1916, and his subsequent order of 18th May, 1916, and return the case to him for fresh decision with reference to the above remarks and after needful enquiry as to the rents and profits realised by the mortgagee during the period he has been in possession as such.

I make no order as to costs.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 168 of 1915-16. (Decided on 24-3-1917.)

Maynard, F.C.

PAT. RAM...

...Applicant.

Versus

ABHA and others.

...Respondents.

Punjab Tenancy Act, S. 8—Tenants in Morni hill tract—fact of occupation for 28 years without payment of rent, land revenue and cesses—if establishes rights of occupancy.

The position of tenants in the Morni hill tract who pay revenue and cesses only is a peculiarly strong one. Held, that having regard to the history of the Morni tract tenures as given in the Settlement Report and to the proved fact of occupation for 28 years through two generations without payment of any rent over and above land revenue and cesses, the applicant, a tenant, is entitled to occupancy rights under S. 8 of the Punjab Tenancy Act.

Revision from the order of the Commissioner of Ambala Division.

JUDGMENT.

Pat Ram Gujar, son of Hamira, resident of Mauli Bhoj Rajpura in the Morni hill tract of the Naraingarh Tahsil, contests notice of ejectment, and claims occupancy rights in 8 bighas, 2 biswas of land, Khasra numbers 42 min, 43 min, 46 min.

A careful examination of the Revenue Records shows that no rent over and above revenue and cesses has been paid for 28 years during which the applicant and his immediate predecessor in interest have been in cultivating possession. It is not proved that the applicant's grandfather was in possession; because records for the period prior to the settlement to 1888-89 are not available; and a claim to occupancy rights under S. 5 (1) (a) of the Punjab Tenancy Act has not been established.

The position of tenants in the Morni hill tract, who pay revenue and cesses only, is admittedly a peculiarly strong one and the Settlement Officer of Ambala, Mr. (Now Sir A.) Kensington thought that there was no doubt, that they were really entitled to permanent rights in the land; and such a position would be quite in accordance with that of the cultivators in many portions of the Punjab Himalayas, whose "warisi" rights under the rule of the indigenous Rajas were virtually rights of permanent occupancy, subject to the payment of the dues of the State.

Among the reasons, which have contributed to the peculiar strength of the tenant's position in these tracts is the difficulty of finding and of replacing tenants.

Having regard to the history of the Morni tract tenures as given in the Settlement report and to the proved fact of occupation for 28 years through two generations without payment of any rent over and above land revenue and cesses, I find that Pat Ram is entitled to occupancy rights under S. 8 of the Punjab Tenancy Act. I accept the application for revision, cancel the notice of ejectment, and find that occupancy rights under S. 8 are established. The point decided being a new one, I give no order on the subject of costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue

No. 3 of 1916-1917. (Decided on 1-8-1917).

Fagan F. C.

AHMAD KHAN and others.

Applicants

Versus.

PARMANAND and others.

Respondents

(i) Civil Procedure Code, Ss. 48, 51, 72, O. 21. r. 30 and Punjab Alienation of Land Act, S. 16 (1).—Power of a Revenue Court to order temporary alienation of the land of an agriculturist judgment-debtor in execution of simple money decree against him—C.P.C., S. 48—applicability.

The decree-holder applied for execution on 2-1-1915. The limitation of 12 years imposed by S. 48, Civil P. C. expired on 1st May 1915. On 13th November 1915, an order staying execution was passed and the file was consigned to the record room. On 20th November 1915 an application for cancellation of the above order, restoration of the case to the pending file and for a temporary transfer of the land in respect of which the arrears decreed accrued, was made. On that the previously stayed execution proceedings were re-opened for an enquiry as to the practicability of the temporary transfer of the land to the decree-holder. Held, that the present proceedings must equitably be held to be a continuation of those instituted on 2-1-15 and that the order of 13th November was merely an interruption and not a determination of those proceedings. The 12 years' limitation therefore did not apply. Held, further, that the Civil Procedure Code nowhere confers on an original Court in or for the purposes of execution

of decree a power of temporarily transferring the property of the judgment-debtor to the decree-holder or to any other person. The powers of a Court in execution are set out in S. 51, Civil Procedure Code, and the special case of money decrees is dealt with in r. 30, O. 21. These provisions do not include any such power of temporary transfer or alienation, nor has an appellate Court such power. A temporary alienation of the immovable property of the judgment-debtor to the decree-holder or other person in satisfaction of a decree is only possible under (a) the condition prescribed by S. 72 of the Civil Procedure Code or under (b) the system prescribed by S. 63 and Schedule III, wherever that system may have been made applicable by the Local Government. The system is not in force in the Punjab so that the only provision allowing of temporary alienation is however made not by the executing Court but by the Collector in his executive capacity after he has been formally authorised in that behalf by the Court in the manner described in the section. Held further, as no proposal to sell the land of an agriculturist judgment-debtor can be made with due regard to the provisions of S. 16 (1) of the Land Alienation Act, no representation by the Collector under S. 72, C. P. C. is legally possible and that therefore no temporary alienation of the land of a member of an agricultural tribe in execution of a decree can be made by the Collector under the authority of the above section. The result, therefore, is that though such land can be attached by a Court in execution of a decree, no further action can be taken towards satisfying the decree by selling or otherwise dealing with that land.

Revision from the order of the Commissioner Multan Division.

ORDER.

In this case the respondents, decree-holders, obtained on 1st May, 1903 from the Court of an Assistant Collector a decree for arrears of rent to the amount of Rs. 1,265-4-9, including costs, against the applicants, judgment-debtors. The land in respect of which the decree was passed was the property of the judgment-debtors but mortgaged to the decree-holders, the former retaining cultivating possession on payment of a stipulated rent. The mortgage was effected on 10th July, 1894, for Rs. 1,000, a further charge of Rs. 600 being added two days later.

Applications for execution of the decree appear to have been made at various times. Finally on 2nd January, 1915, the decree-holder applied for the attachment and sale of the judgment-debtors' property including land. The execution proceedings were, however, stayed and the file consigned to the record-room by the Assistant Collector's order of 18th November, 1915. On 20th November 1915, the decree-holders applied for cancellation of the latter order on review, for restoration of the case to the pending file and for a temporary transfer of the land mortgaged to them in respect of which the arrears decreed had accrued. On this the Assistant

Collector (Mr. Parsons) passed successive orders, dated 30th November, 1915, 20th December, 1915, and 10th January, 1916, the effect of which apparently was to re-open the previously stayed execution proceedings in the form of an enquiry as to the practicability of a temporary transfer of the mortgaged land to the decree-holders. The final order of the Assistant Collector (M. Siraj-ud-Din) was passed on 4th May, 1916, and was to the effect that the application for temporary alienation be dismissed. Against this order, the decree-holders appealed to the Collector who by his order of 14th August, 1916, accepted the appeal and directed that one-third of the land be transferred to the decree-holders for ten years in satisfaction of the decree. A further appeal to the Commissioner by the judgment-debtors was rejected on 5th September, 1916, and they have now applied to this Court for revision.

There appears to have been a good deal of confusion and misunderstanding in the procedure followed by the lower Courts, but before dealing with this it will be well to notice No. 5 of the grounds of revision. The limit of 12 years imposed by S. 48, Civil Procedure Code, expired on 1st May, 1915, so that the application, dated 2nd January, 1915, by the decree-holders was within time. But if it is to be held that that application was finally and definitely disposed of by the order of 13th November, 1915, staying proceedings, then it follows that the subsequent application of the 20th November, 1915, and the proceedings taken after it out of which the present revision has arisen were time-barred. I am, however, of opinion that the present proceedings are in fact, and must equitably be held to be a continuation of those instituted on 2nd January, 1915, and that the order of 13th November, 1915, was merely an interruption and not a determination of those proceedings. The 12 years limitation therefore does not apply.

Turning now to the procedure which has been followed in the case, it is not clear in the first place how the Assistant Collector as a revenue Court executing a decree for money and bound therein by the provisions of the Civil Procedure Code entertained an application for temporary alienation of the judgment-debtors' land to the decree-holders, nor how the Collector sitting as a revenue appellate Court and equally bound by these provisions ordered such an alienation. The Civil Procedure Code nowhere confers on an original Court in or for the purposes of execution of decree a power of temporarily transferring the property of the judgment-debtor to the decree-holder or to any other person. The powers of a Court in execution are set out in S. 51, Civil Procedure Code, and the special case of money-decrees is dealt within rule 30, Order 21. These provisions do not include any such power of temporary transfer or alienation. It follows of course that an appellate Court has no such power. A temporary alienation of the immovable property of the judgment-debtor to the decree-

holder of other person in satisfaction of a decree is only possible under (a) the conditions specified in S. 72 of the Civil Procedure Code or under (b) the system prescribed by S. 63 and Schedule III, wherever that system may have been made applicable by the Local Government. The system is not in force in this province at present so that the only provision allowing of temporary alienation in execution of a decree in S. 72. Such temporary alienation is however made *not*, be it observed, by the executing court but by the Collector in his executive capacity after he has been formally authorised in that behalf by the Court in the manner described in that section. It follows that both the Assistant Collector and the Collector sitting as revenue Courts have exercised in this case a jurisdiction or power which they did not possess; the first in dealing with directly an application by the decree-holder for a temporary alienation or transfer to him of the judgment-debtor's land in execution of a money-decree, the latter in ordering such an alienation on appeal.

Apparently both Courts have acted with some rather confused reference to the provisions of S. 72, Civil Procedure Code, and the consequential instructions contained in Rules and Orders of the Chief Court, Volume I, Chapter II, S. 21, Part F, and in Financial Commissioner's Standing Order 61, paragraph 9, *et seq.* But clearly the essence of these is that the temporary alienation is to be made by the Collector as a Revenue Officer under the authority of the executing Court after a representation has been made by him and accepted by the Court proposing such alienation. In the present case, however, no reference was made by the Court to the Collector and the latter made no representation to the former suggesting a temporary alienation. It is therefore not possible to uphold the Collector's appellate order with reference to S. 72, Civil Procedure Code, and the instructions quoted above. The whole procedure in both the Assistant Collector and the Collector's Courts appears to me to have been irregular and *ultra vires*.

What would have been the correct procedure for the Assistant Collector to adopt under the law as it stands at present is not altogether easy to determine. As the question is not free from doubt and is also of considerable importance with reference more especially to S. 16 (1) of the Alienation of Land Act, it is desirable that I should take this opportunity of dealing with it. It should be remarked that the judgment-debtors are members of an agricultural tribe. Under the above section their land, with which the present case is concerned is not liable to sale in execution of a decree, but it is liable to attachment as held in *Badar Din v. Bura Mal* (1). In that ruling, however, the Hon'ble Judges went on to hold further that the land of a member of an agricultural tribe was liable after attachment to be dealt with "under S. 326 of the (then) Civil Procedure Code" which corresponds with S. 72 of the present Code. This view has

(1) 4 P. R. 1903 (Rev.)

been embodied in para. 56 of that portion of the Rules and Orders of the Chief Court which I have quoted above. It has not, however, been definitely reproduced or adopted in para. 9 of Financial Commissioner's Standing Order 64, and in view of the terms of S. 72, Civil Procedure Code, I feel compelled to dissent from it. Taken strictly, as no doubt it must be taken, that section permits a temporary alienation in those cases in which a Collector represents whether with or without a previous reference from the executing Court, that the sale of the land concerned is objectionable. Sale in execution of decree of the land of a member of an agricultural tribe being illegal under S. 16 (1) of the Alienation of Land Act, any representation by the Collector in regard to such land of the purport contemplated by S. 72, Civil Procedure Code, would be uncalled for, meaningless and *ultra vires*, whether made of his own motion, or after a reference to him by the executing Court in the manner prescribed by the instructions contained in the Rules and Orders of the Chief Court or in Financial Commissioner's Standing Order No. 64. S. 72, C.P. Code, clearly postulates and implies that Collector's representation is to be made with reference to and in view of a proposal to sell attached land, and para. 56 of the Rules and Orders of the Chief Court, S. 21, Chapter II, while observing, it is true, that action under S. 72 may be taken in regard to the land of a member of an agricultural tribe, at the same time clearly states that "a proposal to sell such land can now only be made by mistake." I hold therefore that as no such proposal can be made with due regard to the provisions of S. 16 (1) of the Alienation of land Act no representation by the Collector under S. 72, Civil Procedure Code, is legally possible, and that, therefore, no temporary alienation of the land of a member of an agricultural tribe in execution of a decree can be made by the Collector under the authority of the above section. The result, therefore, is that though such land can be attached by a Court in execution of a decree no further action can be taken towards satisfying the decree by selling or otherwise dealing with that land.

Accepting the application for revision on the above grounds I set aside the orders of the Courts below and dismiss the respondents' decree-holders' application of 20th November, 1915, so far as it relates to the temporary alienation of the land concerned. It will remain for the original Court to determine whether respondents, Parmanand and others, are entitled on that application to any other order in execution of decree. The respondents will pay applicant's costs in this Court as well as those incurred by the latter Courts of Collector and Commissioner.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 233 of 1916-17. (Decided on 19-10-1917).

Maynard, F. C.

Mst. MURAD BIBI... .. *Applicant*

Versus

KHADIM HUSSAIN... .. *Other side.*

**Punjab Land Revenue Act, S. 144—Division of produce and
appraisement—powers of Revenue Officer—Punjab Tenancy Act, S. 12.**

S. 144 gives compulsory power to the Revenue Officer to effect division of produce and no objection by an interested party can prevail so as to put a stop to the process of division or appraisement. When the division has been affected and confirmed by the Revenue Officer, the parties become entitled each to the exclusive possession of his own share as thus determined on the analogy of S. 12 of the Punjab Tenancy Act.

Revision from the order of Commissioner of Jullundur Division.

ORDER.

I have heard counsel for the parties. The case is one of the division of produce between co-sharers. The produce has doubtless been removed, so that any order now passed for its division will not take effect. But it is a matter of importance, for the future guidance of officers dealing with applications for division under S. 144 of the Land Revenue Act, and Ss. 17, 18, 19 of the Tenancy Act to make the nature and effect of the procedure plain.

In his order dated February 17, 1917, which the Collector passed when the case was returned to him for further report by the appellate Court, he said that the respondent objected to the referee for the division of the produce taking any action and would not allow him to divide it. He observed that the procedure is permissive only and implied that there is no machinery for its enforcement. The Commissioner noted that it was obviously impossible now to make a division and virtually endorsed the decision that an objection by one of the parties concerned is sufficient to stop the Revenue Officer or referee from making a division.

It is plain that a co-sharer will only ask for division or appraisement if (1) there is a dispute between him and someone else regarding the amounts to which each is respectively entitled, or (2) if someone else refuses to allow the division or appraisement to take place without the intervention of a Revenue Officer. If it were open to any right-holder to prevent the division or appraisement by merely objecting to it, the provisions of the law on the subject would be stultified. That a compulsory power is intended to be

given is shown clearly enough by sub-Ss. (4) of S. 18 which empowers a referee, with his assessors, to enter upon the land. If this did not mean that he might enter upon the land in spite of objections to his doing so, the clause would be meaningless, and a power of forcible entry upon land for the purpose of doing a particular thing plainly carries with it a power of doing that thing in spite of any objection raised by an interested party. It is argued before me that the framers of the law would have specifically empowered the Revenue Officer to proceed with the division or appraisal in spite of objection, if they had intended that he should exercise a compulsive power. But the sense of Ss. 17 and 18 of the Punjab Tenancy Act is quite clear, and no objection by an interested party can prevail so as to put a stop to the process of division or appraisal.

When the division has been effected and confirmed by the Revenue Officer, the parties become entitled each to the exclusive possession of his own share as thus determined on the analogy of S. 12 of the Punjab Tenancy Act. But this is not the same thing as to say that the Revenue Officer confirming the division is entitled to make an order such as a competent Court might make in decreeing a claim for the delivery of his share of the produce to any particular claimant.

It has been argued before me that a division of produce which is not followed by the actual delivery of share to the persons entitled to them is an entirely nugatory proceeding which benefits nobody. But it may be, and often is a great advantage to a particular sharer to have his share authoritatively ascertained while the crop is still on the ground or on the thrashing floor. And since he becomes legally entitled (on the analogy of section 12 (3) (c) of the Tenancy Act) to the possession of his share when it has been determined for him, he also becomes legally entitled to remove it and anyone who attempts to prevent him from doing so is presumably guilty of an offence under the Criminal Law as well as being possibly liable to an action for damages.

It is unfortunate that in this particular case the order passed cannot benefit the applicant. But the revision is accepted and I give the costs of the proceedings through all the Courts in her favour.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 88 of 1916-17. (Decided on 16-4-1917).

Fagan, F. C.

ABDUL QADIR and another

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Applicants

Versus

Mst. RABIA

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Respondent.

Punjab Land Revenue Act, Ss. 111, 113 and 117—Widow with life estate—applying for partition—her right to do so—duty of the Revenue Officer.

Held, that a widow with a life-estate in a share of a joint holding being undoubtedly a 'landowner' under S. 3 (2) of the Land Revenue Act, is therefore a joint owner for the purposes of S. 111 and as such entitled, subject to the conditions (a) to (c) of that section, to apply for partition of the share. Held further, that widow with a life-estate has not an interest which gives her the right to compel partition at her pleasure and that agricultural custom in the province, as judicially interpreted, generally does not concede to the widow, who is in the enjoyment of a life-estate in an undivided or unseparated share of a holding, the right to obtain partition. Held, therefore, that considering all these things, it will, therefore, be generally desirable that in the class of cases under consideration, the Revenue Officer should proceed under S. 117 of the Land Revenue Act, rather than under S. 115, due attention being paid to the instructions contained in para. 8 of Financial Commissioner's Standing Order No. 27. The Revenue Officer should thus treat the question of the widow's right to obtain partition as one of title. Where he has prima facie ground for thinking that the widow is being obstructed by her co-sharers in the due and reasonable enjoyment of her life-interest in a share of the undivided holding and the co-sharers object to partition, the Revenue Officer should himself proceed, in the exercise of the discretion allowed him by S. 117, to decide the question of title as a Civil Court, the burden of proving the widow's right to obtain partition being placed upon her. Where, on the other hand, there is no such prima facie ground and the co-sharers object, the Revenue Officer should decline to grant the application for partition, until the question has been determined by a Civil Court, the proceedings being filed with leave to the widow to have them re-opened after decision of the civil suit in her favour. 11 P. R. 1895 (Rev.); 82 P. R. 1898 F. B. followed. 70 P. R. 1912; 219 P. W. R. 1913 disapproved.

Case forwarded by Commissioner of Jullundur.

ORDER.

This is a case in which the respondent, Mussammat Rabia, a widow who enjoys a life interest in the share of her sonless deceased husband in a joint holding, applied to the Assistant Collector for partition of such share. The applicants for revision who are her co-sharers and apparently the reversioners of her interest, denied her right to obtain partition. The Assistant Collector treating the question as one of title under Sections 116 and 117 of the Land Revenue Act directed the applicants to file in his Court a civil suit to have their contention judicially established. The Collector, who was the Settlement Officer, concurring with the Assistant Collector dismissed the applicants' appeal. The Commissioner has forwarded the case for revision with the recommendation that for the reasons stated in his order the partition should be refused without referring applicants to a civil suit.

The case raises some rather intricate and at the same time dubious questions regarding the nature and scope of a widow's ordinary life estate and its bearing on her right to claim and to obtain partition if that estate comprises an undivided share in a joint holding. The applicability of S. 115, Land Revenue Act, to a case of this kind has also to be considered. Thus to put the matter more explicitly, should it appear that unless and until the contrary is judicially proved in any particular case a widow's life estate or interest under agricultural custom includes within its scope a right to claim and obtain partition it would seem to be very questionable whether the mere fact of her widowhood is a "good and sufficient" cause within the meaning of S. 115 for absolute disallowance of partition. On the other hand if agricultural custom does not concede the widow a right to obtain partition then the fact of widowhood may constitute such a cause in the absence in any particular case of a judicial finding in favour of such right. It will be convenient to note at this point that the issue whether the question of the widow's right to obtain partition is a question of title or not was fully discussed in *Buta v. Mussammat Jiwani* (1) and decided in the affirmative. I see no reason for dissenting from that conclusion.

The nature of the widow's ordinary life-estate, and more especially the general question whether such estate carries with it a right to obtain partition, has been the subject of a long series of civil rulings which are, it appears to me, in some degree mutually conflicting. The leading revenue ruling on the subject is

(1) 82 P. R. 1898 (F. B.)

Dan Singh v. Mussammatt Sukhan (2) in which several of the previous relevant civil rulings are cited. In that case the Financial Commissioner (Sir Mackworth Young) held that a widow with a life estate in a share of a joint holding being undoubtedly a "landowner" under Section 3 (2) of the Land Revenue Act was *therefore* a "joint owner" for the purposes to Section 111 and as such entitled, subject to the conditions (a) to (c) of that section to *apply for* partition of the share. After discussing the previous civil rulings, and especially the dictum of Plowden, J. in *Ranjha v. Mussammatt Rajji* (3) that a widow with a life estate has not an interest which gives her the right to compel partition at her pleasure, the Financial Commissioner went on to hold that partition of a widow's share was *prima facie* undesirable and that a Revenue Officer in the exercise of the discretion given him by S. 115 should allow such partition only under certain specified conditions. It should be observed that in effect the above ruling did not definitely decide and apparently did not purport to decide the question whether by agricultural custom a widow's life-estate does or does not include as incidental to such estate the right to obtain or compel partition. It merely found that a widow with a life-estate in an undivided share of a joint holding is one of the persons specified in S. 111 of the Land Revenue Act as entitled *to apply for* partition, that is, in other words, to set in motion the machinery provided by Chapter IX of the Act with the object of enforcing any right of partition which the incidents and scope of her life estate may include. This view is practically identical with that taken in *Buta v. Mst. Jiwani* (1). In that case the learned Judges of the Chief Court while criticising the identification of the terms "landowner" and "owner" in *Dan Singh v. Mst. Sukhan* (2) held that a widow with a life estate was an "owner" and therefore a "joint owner" if her estate comprised an undivided share of a holding, and further therefore entitled under S. 111 to apply for partition. It appears to be ground common to the two rulings cited that S. 111 does not deal decisively and definitely with the question whether a widow has a right to obtain or compel partition; it merely concedes to her a *locus standi* before a Revenue Officer for claiming, that is, for applying for, partition which she may or may not be entitled to obtain in virtue of her life-estate. This conclusion I accept and it is I think desirable that the point should be made clear, as there appears to have been some confusion and ambiguity regarding it in the past.

(2) 11 P. R. 1895, (Rev.)

(3) 22 P. R. 1878.

It remains to consider whether in the light of established agricultural custom anything can be affirmed regarding the nature and incidents of the widow's life estate which should affect the exercise of the discretion conferred by S. 115, Land Revenue Act. It is at this point that a conflict of judicial decisions present itself. The rulings, on the question whether a widow's life-estate carries with it as an incident the right to enforce partition are quoted in a convenient form at page 60 of Mr. T. P. Ellis's recently published "Notes on Punjab Custom." See also page 54 of the same work. The conclusion which I reach from a consideration of those cases is that the trend of decisions has been that with reference to the usual custom of the Province the reply to the above question is in the negative and that the burden of proving the affirmative in any particular case lies on the widow. See especially *Daulat Khan v. Mussammat Mahtab Bibi* (4). Such at least appears to have been the general result up to the passing of the decision published as *Mussammat Bhag Bhari v. Wazir Khan* (5). With all deference to the learned Judge in that case I am disposed to think that there recurred in it the confusion, to which I have already alluded between the right to claim or apply for partition given by S. 111, Land Revenue Act, and the right to obtain or compel partition as an incident of a widow's life-estate. The learned Judges held that the widow has "a clear, unequivocal statutory right.....to demand partition." As to this there is of course no question. They went on however to hold further that the burden of proving a custom by which a widow is restrained from obtaining partition of a joint holding lies on the co-sharer who asserts its existence. To the latter conclusion the terms of S. 111 appear to me to be irrelevant. Apart from the reference to that Section, the learned Judges in the above ruling, as I understand it, confined themselves to the expression of an opinion that it was generally desirable that partition of her share should be allowed to the widow. I am disposed to agree with this view but the question is not its desirability but whether as a matter of fact one of the ordinary legal incidents of joint ownership, that is, the right to obtain partition, is in the case of the agricultural widow's life-estate abrogated by custom. On this point, apart from *Mst. Bhag Bhari v. Wazir Khan* (5), which was not followed in the subsequent ruling (*Mukandi v. Bakhtawar Singh*) (6) the published judicial decisions, as already remarked, have been in favour of the view that agricultural custom generally does not

(4) 155 P. W. R. 1909.

(5) 70 P. R. 1912.

(6) 219 P. W. R. 1913.

recognise the existence of the widow's right to obtain partition; by partition being understood an entire separation of estate.

At the same time it has been held in several reported decisions (Ellis op. cit., page 60) that the widow is in all cases entitled to separate possession of her share as distinguished from a definite partition. The rulings however contemplate that such separate possession is to be obtained and enforced by the decree of a Civil Court; not by means of a partition under Chapter IX of the Land Revenue Act. See Punjab Record No. 82 of 1898 (Civil) No. 30 of 1905 Punjab Weekly Reporter No. 155 of 1909 (Civil). The distinction between partition and separate possession was explained in Punjab Record (No. 116 of 1879 (Civil) and the Financial Commissioner after quoting that explanation in Punjab Record 11 of 1895 (Revenue) also held that "a Revenue Officer acting under Chapter IX of the Land Revenue Act had no power to award separate possession of her share to a widow except by effecting partition of her share." The award of separate possession would be of the nature of a temporary partition to last only during the continuance of the widow's limited estate. It is true that the word partition is not expressly defined for the purposes of the Land Revenue Act, but there can, I think, be no question that the procedure laid down in Chapter IX of the Act was not intended to apply to temporary partition except under the circumstances specified in S. 125. The presence of the latter section in fact seems to strengthen the above conclusion. I would hold therefore that the separate possession to which a widow has been held to be entitled cannot be given by a Revenue Officer under the provisions of Chapter IX of the Land Revenue Act.

Having regard therefore to the fact that, as found above, agricultural custom in the province, as judicially interpreted up to the present, generally does not concede to the widow, who is in the enjoyment of a life-estate in an undivided or unseparated share of a holding, the right to obtain partition. I am of opinion that this fact would constitute a good and sufficient reason for the exercise of the Revenue Officer's discretion under S. 115, Land Revenue Act, to refuse partition. when such a widow applied for it and other parties to the proceedings denied her right to obtain it. The widow would however in spite of such refusal still be in a position to sue to establish her right to partition in a Civil Court. It will therefore be generally desirable that in the class of cases under consideration the Revenue Officer should proceed under S. 117 of the Land Revenue Act, rather than under S. 115; due attention being paid to the instructions contained in para. 8 of Financial Commissioner's Standing Order No. 27. The Revenue Officer should thus treat the question of the widow's right

to obtain partition as one of title. Where he has *prima facie* ground for thinking that the widow is being obstructed by her co-sharers in the due and reasonable enjoyment of her life-interest in a share of the undivided holding and the co-sharers object to partition, the Revenue Officer should himself proceed in the exercise of the discretion allowed him by Section 117, to decide the question of title as a Civil Court, the burden of proving the widow's right to obtain partition being placed upon her. Where, on the other hand, there is no such *prima facie* ground and the co-sharers object the Revenue Officer should decline to grant the application for partition until the question has been determined by a Civil Court, the proceedings being filed with leave to the widow to have them reopened after decision of the civil suit in her favour. If and when the Civil Court should find on the question of title that the widow has a right to obtain partition then the mere fact of her widowhood would no longer constitute as against her "a good and sufficient cause" under Section 115 for refusing partition.

In the particular case which has been referred by the learned Commissioner, there is I consider no satisfactory *prima facie* ground for holding that the widow, *Mussammatt Rabia*, is being obstructed in the due and reasonable enjoyment of her life estate. On the contrary there is ground for thinking that she desires partition for ulterior objects not connected with such enjoyment. The case is therefore one in which the application for partition should be refused pending a decree of a Civil Court in favour of *Mussammatt Rabia* establishing her right to obtain partition. I accordingly agree with the learned Commissioner so far as to set aside the orders of the Assistant Collector and Collector and, refusing the application for partition, to direct that the proceedings be filed until the applicant applies for them to be reopened after establishing her right to partition in a Civil Court.

The respondent will pay the costs incurred by the applicants for revision throughout the proceedings.

Order accordingly.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 3 of 1916-17. (Decided on 23-7-1917).

Fagan, F. C.

SARUPA and others

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*Appellants**Versus*

KUNDAN LAL and others

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Respondents.

(i) Punjab Alienation of Land Act, Ss. 7 and 6—Mortgage under S. 6—subsequent mortgage to an agriculturist with the right of redemption—validity.

F and R, members of an agricultural tribe, made a usufructuary mortgage under S. 6 of the Punjab Land Alienation Act in favour of a Mahajan. After about 4 years the mortgagors made a second mortgage of the same property, i.e., mortgaged the equity of redemption in favour of certain members of agricultural tribe. The second mortgage contained a stipulation for possession in favour of the mortgagees and also expressly conferred on them a power of redeeming the first mortgage. Held, that there was nothing to prevent the mortgagors from validly conveying to the second mortgagees the rights of redemption which they enjoyed in respect of the first mortgage. Held further, that as the parties were members of an agricultural tribe and therefore exempt from the restriction of the Land Alienation Act, the mortgagees were still entitled, in accordance with ordinary law of mortgage, to redeem the prior encumbrance in the manner provided by S. 7 of the Act.

(ii) Punjab Alienation of Land Act, S. 6—Mortgage under—whether redeemable under S. 1 of Punjab Redemption of Mortgages Act.

Proviso to S. 1 of the Punjab Redemption of Mortgages Act of 1913 excludes from its operation mortgages made under S. 6 of the Alienation of Land Act.

(iii) Punjab Alienation of Land Act, Ss. 8 and 6—Successive mortgages under S. 6—validity—respective rights of mortgagees.

If a member of an agricultural tribe makes a prior mortgage under S. 6 of the Punjab Land Alienation Act of 1900 and subsequently mortgages the same land to a member of the non-agriculturist tribe, the subsequent mortgage must be in one of the forms permitted by S. 6 of the Act and none of those forms confer on the mortgagee, whether with or without possession, a power of redeeming a prior mortgage, while an express condition to that effect would be null and void under S. 8 (2) of the Act.

Appeal from the order of the Commissioner of Ambala.

ORDER.

The facts of this case are as follows: Fauja and Risala, Gujars and members of an agricultural tribe, in the year 1909, made a usufructuary mortgage for Rs. 400 under S. 6 of the Alienation of Land Act of certain land in favour of the respondent, who is a Mahajan by caste. In 1913 the mortgagors made a second mortgage of the same property, *i.e.*, mortgage of the equity of redemption, in favour of the applicants, Sarupa and Nihala, who are Jats and members of an agricultural tribe. The second mortgage was for a sum of Rs. 700 with a stipulation for possession in favour of the mortgagees and also expressly conferred on them a power of redeeming the first mortgage. The second mortgage being one between members of agricultural tribes in one and the same group was of course not subject to the restrictions of the Alienation of Land Act. The second mortgagees applied under Section 7 (3) and (5) of the Act to redeem the first mortgage. The Collector allowed the application on payment of Rs. 184-10-0, which amount was deposited by the applicants. The Commissioner while expressing an opinion that the Collector's order might have stood under Act II of 1913, set it aside on the ground that the word mortgagor in S. 7 of the Alienation of Land Act does not include a second mortgagee.

Firstly as regards Act II of 1913 it may be observed that the proviso to S. 1 of that Act II of 1913 excludes from its operation mortgages made under S. 6 of the Alienation of Land Act, Act II of 1913 therefore, can have no application to the present case.

As regards the question whether the applicants as second mortgagees can with reference to the provisions of the Alienation of Land Act exercise the right to redeem, or more accurately to pay off the first mortgage which their deed expressly gives them, and which it may be observed is an ordinary incident of the general law of mortgage apart from express stipulation (see Transfer of Property Act, S. 74). I see no reason to doubt that they can do so. The terms and scope of any alienation which the mortgagors might choose to make in their favour would in no way be restricted by the provisions of the Alienation of Land Act, since both parties are members of agricultural tribes. Accordingly there was nothing to prevent the mortgagor from validly conveying to the applicants the rights of redemption which they enjoyed in respect of the first mortgage as against the respondents. Such conveyance was expressly made in the second mortgage. But even had there been no such express conveyance I hold that as both parties were members of an agricultural tribe and therefore exempt from the restrictions of the Alienation of Land Act the applicants

would still have been entitled in accordance with the ordinary law of mortgage to redeem (or pay off) the prior incumbrance on their property in the manner appropriate to such incumbrance provided by Section 7 of the Act. As between the mortgagors and the second mortgagees, the applicants, the original mortgage, so paid off *qua* the first mortgagees, still subsists on the principle of Section 74, Transfer of Property Act, as security during the remaining period of its legal term of 20 years for the sum, *i.e.*, Rs. 184-10-0, paid off by the applicants, the mortgagor retaining his power of redemption under Section 7 as against them. The result is so far apparently anomalous that a mortgage under Section 6 of the Alienation of Land Act subsists between members of agricultural tribes of the same group, but there is nothing in the Act forbidding such a result.

Had the second mortgagees been persons other than members of an agricultural tribe in the same group as the mortgagors, the result would have been different. In fact the case could not have arisen at all. Any mortgage made in their favour by the mortgagors must in that case have been in one of the forms permitted by Section 6 of the Alienation of Land Act. None of those forms confer on the mortgagee whether with or without possession, either expressly or by implication a power of redeeming or paying off a prior mortgage while an express condition to that effect in a mortgage-deed would be null and void under Section 8 (2). It follows therefore as a general principle that a second mortgage if made under Section 6 of the Alienation of Land Act cannot give the mortgagee power to redeem or pay off a prior mortgage. The present case however is different in that the second mortgage being between members of agricultural tribes in the same group was not subject to the restrictions of that section and was made in an ordinary form. I accordingly accept the appeal and restore the order of the Collector. The respondent, Kundan Lal, will pay the costs of the applicants, Sarupa and Nihala, before the Commissioner and in this Court.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

Revenue.

No. 59 of 1915-16. (Decided on 10-4-1916).

Fagan, F.C.

KURA

*Applicant**Versus*

MAN SINGH

Other side.

Lambardar—appointment—hereditary claim—Punjab Land Revenue Rule 17 (ii)—imperative nature of.

Held, that the descendants of a person, who replaced another, excluded for misconduct in the Mutiny, should be preferred to the descendants of the latter in the matter of appointment as Lambardar, the terms of the Punjab Land Revenue Act, S. 17 (ii) being imperative. 3 P.R. 1884 (Rev.) distinguished.

Punjab Land Revenue Act, S. 16—revision—interference on.

The Financial Commissioner will interfere on revision in case of breach of the mandatory provisions of the Punjab Land Revenue Rule 17 (ii).

Revision against the order of the Commissioner of Ambala Division.

ORDER.

Daulta was dismissed from his Lambardari after the Mutiny and his family was excluded from the succession. See order of 7th January 1860.

Nagar who was in no way related to Daulta was appointed in succession to the latter and it is clear that the post has then become hereditary in Nagar's family.

The terms of Land Revenue Rule 17 (ii) are imperative and under it Kura, the petitioner is entitled to succeed Trikha deceased.

Under the above rule the descendants of Daulta have no claim to succeed as against the hereditary claims of the descendants of Nagar given by that rule.

Mutsaddi v. Badaman (1) quoted by the Collector is irrelevant as it was prior to the present Land Revenue Act and rules thereunder.

The case is, I consider, one for revision. I accordingly set aside the orders of the Commissioner and the Collector and appoint Kura to the *Lambardari*.

The respondent will pay petitioner's costs in this Court.

Application allowed.

(1) 3 P.R. 1884 (Rev.)

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1918.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 129 of 1917-18. (Decided on 29-8-1918).

Fagan, F. C.

KIRPA

Applicant

Versus

NASIB SINGH AND OTHERS

Respondents.

Punjab Land Revenue Act, S. 117—Question of title—entry as co-sharer—presumption of joint possession—rebuttal.

Where the respondents in the partition proceedings raised the question of title before the Assistant Collector, held, that under the circumstances the officer in accordance with the instructions contained in paragraph 8 of Standing Order 27. should himself have proceeded to decide the question of title without referring the objectors to a Civil Court. Where the applicant for partition is recorded as a co-sharing owner along with the other parties in the land in dispute, the presumption clearly is that the applicant is a co-sharer in the land of which he seeks partition. The presumption cannot be rebutted nor such possession on his part defeated by the mere denial of his title by the other parties. To effect this, there must be very clear and precise proof that their possession is in fact and really adverse to him so as to amount to his actual ouster from all connection with the land in dispute and to his acceptance of such a position.

Case forwarded by Commissioner of Ambala.

ORDER.

The facts of the case are fully set out in the orders of the Settlement Collector and of the Commissioner. The applicants for revision being the respondents in the partition proceedings raised the question of title before the Assistant Collector. Under these circumstances that officer in accordance with the instructions contained in paragraph 8 of Standing Order 27 should himself have proceeded to decide the question of title without referring the objectors to a Civil Court. So far at any rate his order is incorrect.

There remains the question as to the party on whom the burden of proof lies. Now as to this it is to be observed that Nasib Singh, the applicant for partition, is recorded as a co sharing owner along with the other parties in the land in dispute. Moreover, it appears from the order of the Settlement Collector that Nasib Singh joined those other parties in a suit for pre-emption of a portion of that land and that he paid up his share of the price. Under these circumstances the presumption clearly is that Nasib Singh is a co-sharer in the land of which he seeks partition. It seems clear indeed that he is not in actual physical possession or occupation of any part of the land, but under the circumstances there arises I hold the further legal presumption that the possession of one co-sharer is the possession of another; that is to say that Nasib Singh is in reality in legal or constructive possession of his undivided share through or by means of his co-sharers the respondents in the partition proceedings. The presumption cannot I think be rebutted nor such possession on his part defeated by the mere denial of his title by the other parties. To effect this there must be very clear and precise proof that their possession is in fact and really adverse to him so as to amount to his actual ouster from all connection with the land in dispute and to his acceptance of such a position. I do not think that there is such proof in this case and under the circumstances it is I consider for the applicants for revision to prove that Nasib Singh has no title to the share in respect of which he claims partition or to obtain such partition. I am not prepared therefore to pass an order in the terms recommended by the Commissioner. I, however, set aside the orders of the Assistant Collector and the Settlement Collector and return the case to the former officer for disposal in accordance with the above remarks. He should call upon the respondent-objectors in the partition proceedings to file a duly stamped plaint by a fixed date. No order as to costs.

Case remanded.

ORDER OF SETTLEMENT OFFICER.

The order of the Settlement Officer (Mr. R. Whitehead) dated 14th August 1917, referred to above is as follows :—

There are three parties to the proposed partition as shown in *Nagsha Alif* of the Vernacular File. The first two parties, Amrao Singh, &c. and Kirpa are shown as being in possession of all the land in dispute. The third party Nasib Singh is not in possession and has asked for partition. I note that other land in the same joint khata is held and cultivated by occupancy tenants. I also observe that Kirpa has mortgaged with possession his entire holding. As Amrao Singh and Kirpa have denied Nasib Singh's title to the land the lower Court has directed them to sue in a Civil Court for the extinction of that title. Amrao Singh and Kirpa now appeal against that order as they consider that Nasib Singh should have been directed to sue for possession. I find that one Mohan Singh had purchased one-half of the land in dispute from the Chikan. Amrao Singh

Kirpa and Nasib Singh obtained this half from Mohan Singh by pre-emption and I find that Nasib Singh paid his fair share of the purchase money to Mohan Singh. Under these circumstances I refuse to interfere with the order of the lower Court. I dismiss this appeal without costs.

ORDER OF COMMISSIONER

The order of the Commissioner, (Mr. H. A. Casson), dated 30th April 1918 referred to above is as follows.

One Nasib Singh applies for partition of land of which he is recorded owner along with (1) Amrao Singh, &c., and (2) Kirpa.

The possession is all entered in names of Amrao Singh, &c; and Kirpa has mortgaged his rights to Amrao Singh, &c. These sharers deny Nasib Singh's right. The Assistant Collector ordered Amrao Singh and Kirpa to institute a suit within 2 months to get Nasib Singh's claim to proprietary right declared void. They appealed unsuccessfully to the Settlement Collector. They have not instituted the suit and the period of 2 months has passed.

In this application the defendants-appellants plead that Collector did not consider all the grounds of appeal, that no guardian was appointed for one of them, a minor, and that the onus of bringing a civil suit should have been laid on applicant for partition who is now respondent. The order passed seems palpably wrong and not only so but unjust. Why should Umrao Singh and Kirpa be ordered to go to a Civil Court? It is not they who have set matters in motion by applying for partition. Why should they peremptorily be told to go into the Civil Courts within 2 months on pain of having their objections brushed aside?

The proper order in this case, as the applicant for partition appears to be out of possession, and probably seeking to gain by his application a right which he knows will be disputed, was to file the application and leave either party to go to the Civil Courts. Naturally the person who would have had to go to the Civil Courts, had the order taken this form would have been Nasib Singh, as the other side are quite content with their present position.

Now as to the minor mentioned in the appeal, I find that she is a girl who is recorded as co-sharer with Nasib Singh applicant. She is not however herself an applicant and so far has not been made a party to the case, nor is there any reason why she should be made a party at this stage.

I refer the case to the Financial Commissioner on the revision side and recommend that the application be accepted and that order be passed as above.

The parties do not wish to be represented on appeal.

PUNJAB CASE LAW PART C. [1918],
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 36 of 1917-18. (Decided on 27-2-1918.)

Maynard, F.C.

KIRPA AND ANOTHER

*Applicants**Versus*

TIRHU and others

Respondents.

**Punjab Tenancy Act, S. 8—occupancy rights—landlord's promise
never to eject.**

Held, occupancy rights under S. 8 may be acquired by a promise on the part of the landlord never to eject. A promise of this character need not necessarily be explicit. It may be implied, and may be established by evidence of the intention of parties as shown by their actions. And a promise not to eject does not mean a promise not to eject, under all circumstances whatsoever, but a promise not to eject 'ta qasur'. Held further, that the facts which constitute evidence of the intentions of the parties in one tract may differ widely from those which constitute evidence of similar intentions in another.

6 P.R. 1900 (Rev.); 6 P.R. 1914 (Rev.) referred.

Revision from the order of Commissioner of Jullundur.

ORDER.

I have heard counsel for both parties. The applicants are grandsons of one Pathu who was shown in the Settlement Record of 1868 as tenant of certain lands of which the land now in dispute forms part, paying a rent of Rs. 5-2-0 by the year. It appears that Rs. 4-5-3 was the portion of this sum due by way of land revenue and cesses, so the rent was a very favourable one. It was noted that Pathu had received the land, four years before, in a cultivated state from the landlord and that he was a tenant "of the second sort." In the list of tenants Pathu is described as one who brought ploughs from another village to cultivate the lands. His home was in Tika Paragpur, which, it appears, is about a mile away. He clearly did not belong to the class described in paragraph 50 of Sir James Lyall's Settlement Report, because he found his own implements. He was, it would seem, an "opahu" belonging to that very small sub-division of the class which did not pay a rent in kind, but a cash rent, which, as already noted, was very favourable to the tenant; and it is a fair inference, from the facts about rents stated in paragraph 51 of the above quoted report, that his status was in some respects a privileged one. On the other hand he was not, at all events in 1868, a "basnu" or "basiku opahu" because he did not then reside upon the land which he cultivated, but about a mile away from it.

In the peculiar conditions of the Kangra District the fact that Pathu did not reclaim this land from waste has no bearing upon the question of his status as a tenant. In paragraph 57 of the Report already cited Sir James Lyall writes as follows :—

“As to the reclamer of waste, the waste being, as I have explained already, all State property or no man's land, it followed that no private person held any which he could make over to another for cultivation, and that the man who first cleared a field must hold it as a crown-tenant or proprietor, not as an “opahu.”

If Pathu had reclaimed the waste he would have been its proprietor, not its tenant, but there is no suggestion to this effect.

In 1892 the Settlement Record shows Kura, son of Pathu now stated to be an inhabitant of the village, and a tenant of class No. 2, occupying the same land of which a small portion has become a residential site. The rent is still a favourable cash rate, being Rs. 5-7-0 in a lump sum for the area now in dispute, while the revenue is Rs. 5-9-9 and the cesses Rs. 0 12-3. In the resettlement which has just been completed by Mr. Shuttleworth, this rent is even more favourable being Rs. 3-8-0 in a lump sum, against a total of Rs. 6-2-6 for revenue and cesses.

It appears then that the applicants have been cultivating continuously for three generations and for fifty four years, at a favourable but not unvarying cash rent : that the family originally brought its own implements from another village to cultivate the land, and that it did not settle upon the land till some date unknown between 1868 and 1892, but has been settled upon it for at least 26 years. They are described throughout as ‘tenants of second sort’ : and this expression means that they originally brought the implements of cultivation from another village, and did not originally settle on the land.

On these facts the Collector found that the applicants became “ basiku opahu”, sometime before 1892, and that the conditions which created this class of tenant did not cease automatically with the preparation of Sir James Lyall's records : and he declared them occupancy tenants under S. 8 of the Punjab Tenancy Act. The Commissioner held that the status of “ basiku opahu ” cannot be acquired by settlement on the land, not as a tenancy : and that no custom is proved by which a tenant of class 2 is entitled to occupancy rights : and he restored the order of the Assistant Collector, ordering ejectment, subject to the payment of Rs. 30-10-3 as compensation.

The decision of the Financial Commissioner which forms the precedent for holding that the “ basiku opahu ” is entitled to occupancy rights under S. 8 of the Punjab Tenancy Act, in contained is Sir Michael Fenton's

judgment in *Chowdari v. Jassa* and others (1), from which I take the following extracts:—

“A very full account of the *basiku opahu* tenure is given in Mr. (Sir James) Lyall's Settlement Report (paragraphs 51—56). From it I gather that the following are distinctive incidents of the tenure:—

(a) The tenant was induced to settle down on the holding by the landlord.

(b) He was required to live on or near the land, building the farm houses thereon. In this respect he differed from the *opahu* who lived in the village and was not a *basiku*.

(c) Though there was no deed or express verbal agreement there was an implied contract that the tenant should hold so long as he farmed well and paid the rent, or in other words “*ta qusur*, that is, till commission of a fault against his tenure.”

Now it is difficult to understand why there should be any hesitation in holding that tenants of the above class are entitled to an occupancy status. The vague and undefined liability to eviction for a fault against tenure is nothing more than the liability which has since been brought under statutory definition and regulation in Ss. 38 or 39 of the Punjab Tenancy Act 1887. That this liability was not in 1865 regarded as inconsistent with an occupancy status is I think sufficiently attested by the facts that at a meeting of Hamirpur proprietors convoked by Mr. Lyall in that year the response to the inquiry whether by the custom of the country any class of tenants was entitled to the status of hereditary cultivator, was that *basiku opahus* were so entitled.

Since Mr. Lyall wrote in 1872 the scope and intention of S. 8 of the Tenancy Act has been examined, notably by Sir Lewis Tupper in No. 6 Punjab Record, Revenue, of 1900. It seems to me that it is in accordance with the principles derived from that ruling to hold that a tenant whose tenure includes the incidents which I have above described as constituting the distinguishing features of the *opahu basiku* tenure, and whose position is further sortified by length of position, is entitled to be regarded as an occupancy tenant under S. 8 of the Tenancy Act, 1887. I attach no importance to the consideration mentioned by the Commissioner that the tenant in the present case has not enjoyed fixity of rent. Under the Tenancy Acts of both 1868 and 1887 the rents of occupancy tenants are liable to enhancement.”

In the Kangra District houses are commonly of a substantial kind of climatic reasons, and the fact that a tenant goes to the trouble and expenses of building a house upon a particular piece of land serves at once as a

(1) Revision No. 204 of 1911—12.

guarantee to the landlord that he will not lightly desert the land, and indication of an understanding between the landlord and himself that he will not lightly be dispossessed. Behind the decision that a *basiku opahu* is entitled to occupancy rights, there lies a principle ; and this principle is that when a tenant has been led to expect some permanence of tenure, there is an implied promise on the part of the landlord to treat the tenure as permanent. The building of the house is, along with other facts, a piece of evidence as to the intentions of the parties.

On this point Sir James Lyall writes in paragraph 54 of the report above quoted :—"This distinction which I have drawn between the "*basiku opahu*," or tenant settled down on the land he farms, and the "*opahu*," whose home, though in the neighbourhood, is not connected with the farm, is one which is, I think, generally recognised. It is based on the presumption that, in the one case, to induce the tenant to move, build, and settle down, he must have been led to expect some permanence of tenure : in the other case, the same presumption does not arise. But to any that by custom and feeling of the country the whole question of right depends upon, whether the tenant lives on the land or not, is to say too much, and to draw a more distinct line between the two classes than really existed or exists."

He then goes on to say that the length of occupancy also carries great weight and though it has been repeatedly laid down that the mere duration of occupancy does not create occupancy rights it is plain that such duration is a most important piece of evidence regarding the intentions of the parties, which are, at bottom, the question in issue in a case of this character.

In *Khairati v. Mannu Khan* (2) Sir Lewis Tupper after a full examination of previous published authorities, instanced four classes of cases in which a claim to occupancy right under S. 8 may properly be decreed : while carefully guarding himself against the inference that right may not be decreed on other grounds also. One of the four classes consisted of the cases in which there has been a promise never to eject. A promise of this character need not necessarily be explicit. It may be implied, and may be established by evidence of the intentions of the parties as shown by their actions. And a promise not to eject does not mean a promise not to eject under all circumstances whatsoever, but a promise not to eject *ta qasur* using that expression as it has been defined in Sir M. Fenton's judgment, already quoted. Such an implied promise, inferred from incidents in a tenancy which show that the tenant was in a position at the commencement of the tenancy, to dictate his own terms to the landlord, has been made a ground for decreeing occupancy rights under S. 8 in an im-

portant group of cases in a plains district also *Nawab Ali v. Lal Singh* (3) but it is important to make it clear that the facts which constitute evidence of the intentions of the parties in one tract may differ widely from those which constitute evidence of similar intentions in another. The position can best be made clear by saying that the rule, that a promise, express or implied, is a ground for decreeing occupancy rights under S. 8 is a rule of substantive law: while a finding, that particular facts may be taken in a particular set of circumstances to constitute evidence of the existence of the promise, is a finding as to the weight and effect of certain kinds of evidence. In the present case the true issue is not whether the applicants are or are not "basiku opahu" but whether the proved facts show that it was the intention to make the tenancy a permanent one. In a case in which the principal item of expense to a tenant is the clearing of the soil of jungle and the breaking of it up for cultivation, it would be quite natural to hold that the actions of the tenant from which his intentions and expectations could reasonably be inferred must be actions performed before this great expenditure of labour had been incurred, in other words, that if the original terms of the tenancy did not establish a favouring intention, no subsequent change could be regarded as establishing it. But when, as in the present case, the principal fact by which the intentions and expectations of the tenant, are to be judged, is the migration to the land and the erection of a house there, it is fair to argue that the trouble and expense which these things involve are equally great at whatever point in the history of the tenancy they are undertaken, and equally valid evidence of an implied promise, whether at the commencement of the tenancy or after it has been in existence for 20 years.

I find then that the promise not to eject which is one of the grounds on which a claim to occupancy rights under S. 8 of the Punjab Tenancy Act may properly be decreed, may be proved by facts indicative of the intentions of the parties: and that, in the circumstances of the Dehra Tahsil of the Kangra District the facts established in the present case, *viz.*, that the applicants' family has been cultivating continuously for three generations and for fifty-four years at a favourable cash rent, having originally provided its own implements for the cultivation, and having settled on the land sometime after the commencement of the tenancy but not less than 26 years ago, do constitute proof of such a promise. I accept the application for revision and restore the appellate order of the Collector decreeing occupancy rights under S. 8 and cancelling the notice of ejectment. I give the costs of the present proceedings in favour of the applicants.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate side.

Revenue.

No. 10 of 1917-18. (Decided on 19-2-1918).

*Maynard, F. C.*MASHIR ALI.....*Appellant**Versus*MALIK CHIRAGH KHAN.....*Respondent.***(i) Lambardar—appointment of—Collector's choice—appointment by officer—when not to be interfered with.**

Where an officer in appointing a lambardar exercises his discretion in a reasonable manner neither ignoring any portion of those matters which he ought to consider, nor perversely running counter to the general sense of the rule, his decision ought to be allowed to stand; and the mere fact that an appellate or revising Officer takes a different view of personal claims is not a good reason for upsetting or modifying that decision.

(ii) Lambardar—succession—lambardar dying issueless—matters to be considered—decision on rival claims.

Where a lambardar died without issue, the question of appointment must be dealt with under r. 15, as though it were case of first appointment. An officer making an appointment is at liberty to consider all matters which may reasonably be regarded as relevant to the suitability of an appointment, and he is expected to decide between rival candidates according to the general balance of their respective advantages, or disadvantages, of appointing each respectively.

Appeal from the order of Commissioner, Multan.

ORDER.

I have heard Counsel for the parties. There is no claim on the part of either to succeed as heir to the late headman, and No. (8) in the grounds of appeal is misleading in this respect. The case is, as observed by the Commissioner, one to be dealt with under rule 15 as though it were a case of the first appointment of a headman.

Rule 15 specifies four matters for consideration. But these four matters are not the only matters to be taken into account. They are to be taken into account "among other matters," as the first sentence of the rule shows. An officer making an appointment is at liberty to consider all matters which may reasonably be regarded as relevant to the suitability of an appointment, and he is expected to decide between rival candidates according to the general balance of their respective claims and of the administrative advantages, or disadvantages, of appointing each respectively. If he exercises his discretion in a reasonable manner, neither ignoring any portion of those matters which he ought to consider, nor

perversely running counter to the general sense of the rule, his decision ought to be allowed to stand, and the mere fact that an appellate or revising officer takes a different view of personal claims is not a good reason for upsetting or modifying that decision.

The Collector had the facts regarding the property and services of the rival candidates before him, and Malik Chiragh Khan is evidently a well-known man, being a retired military officer of distinction and a considerable landed proprietor in the Colony. The order of appointment mentioned the fact that "there is an old feud between him and the other *lambardar* L. Girdhari Lal," and observed: "In fact Malik Chiragh Khan has a great many feuds. He should not be appointed *lambardar* in this *chak* so long as it can be helped."

Against the Collector's order appointing Mashir Ali (who appears at the present time to be the owner of 6 squares in the *patti*, while Malik Chiragh Khan is the owner by purchase of the other eight) Malik Chiragh Khan appealed to the Commissioner. The Commissioner found that he owns more property than Mashir Ali and that his services and those of his son are equal or greater than those of Mashir Ali and his forefathers, and also that his influence in the neighbourhood is considerable. He also observed that Malik Chiragh Khan is not to be blamed in the matter of his feud with Girdhari Lal. He, therefore, set aside the Collector's order and appointed Chiragh Khan.

The Collector's further remark that Malik Chiragh Khan has a great many feuds, and should not be appointed *lambardar* in his *chak* so long as it can be helped, was overlooked, or at all events not specifically dealt within the Commissioner's order.

The Collector gave full consideration to the claims of the parties, and assigned a definite reason for not selecting the present respondent. Since he neither ignored any of the considerations which the Rule requires him to take into account, nor gave a decision, which could be described as perverse or unreasonable, between the claims, taken each as a whole, of the two parties, his decision should not have been reversed upon appeal. I therefore accept the present appeal and restore the Collector's order appointing the appellant. I give the costs of the present proceedings in favour of the appellant.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 60 of 1917-18 (Decided on 2-3-1918)

Maynard, F. C.

PIR MULK SHAH

*Appellant**Versus*

NATHU and others

Respondents.

(i) **Punjab Tenancy Act, S. 19 (2)—Appraisement proceedings—appraiser acting honestly and with due care—duty of Revenue Officer to confirm or vary—omission to do so—effect of.**

Where an appraiser acts honestly and with due care, the Revenue Officer should make an order under S. 19. (2) of the Punjab Tenancy Act, either confirming or varying the appraisement. The refusal by tenant to accept the result of appraisement is not an adequate reason for declining to confirm it.

(ii) **Punjab Tenancy Act, S. 19—Value of executive instructions.**

The object of the executive instructions given is to provide the revenue Courts with a means of calculating the probable produce and its probable selling value, from the records of crop inspection, the Settlement Officer's estimate of average out-turns of other available sources, in those cases in which reliable evidence of the actual produce and actual selling price is not available.

Revision from the order of Commissioner, Rawalpindi.

ORDER.

In this group of cases, Nos. 60 to 62. I have heard counsel for both the parties. The facts are these. The landlord applied for appraisement of the produce, which was made accordingly by Abdulla Khan, Zaildar. There is no suggestion that the appraiser acted otherwise than honestly and with due care. The Revenue Officer should thereupon have made an order, under S. 19 (2) of the Punjab Tenancy Act, either confirming or varying the appraisement. He omitted to do so. This was a grave omission, but there is no reason why either of the parties should suffer by reason of the remissness of the Revenue Officer, and the appraisement proceedings can be, and ought to be, considered on their merits, notwithstanding the absence of formal confirmation.

The appraisement took place on April 9th, a date on which it is reasonably to be supposed that, in the Gujrat District, all the principal crops were still standing, and that a capable appraiser, acting in good faith, would have no difficulty in appraising them accurately. There is a subsequent suggestion, in the course of the hearing of the present suits before the Naib-Tahsildar, that certain crops had already been cut. *Senji, khawid*, coriander seed and *Sounf* are specially mentioned. It is

quite possible that some crops had already been cut for green fodder. But, if this was so, it was fair, having regard to S. 16 of the Act, to assume that the produce was as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest. The areas sown with spices were very small.

There is a note on the appraisement proceedings which appears to show that the Revenue Officer omitted to pass an order under S. 19 (2) because the tenant did not accept the appraisement. It is sufficient to say here that the refusal by a tenant to accept the result of an appraisement is not an adequate reason for declining to confirm it. If it were an adequate reason for declining, it would always be in the power of a tenant to stultify appraisement proceedings by merely objecting to them. This is not the intention of the law.

The Naib-Tahsildar did not give a decree for the value of the produce on the basis of the appraisement: but made a calculation of his own, by adding 50 per cent. on some not clearly defined principle, to the normal or average rates (which are intended for application when there is no means of ascertaining the actual produce of a particular harvest.). To the result thus obtained he added one anna¹ in the rupee on account of *malikana*, which is due at the rate of $12\frac{1}{2}$ *topa* per *manī* of the produce.

On appeal the Collector, again ignoring the appraisement, which he refers to only to say that it was not accepted by the tenants, made a fresh calculation of his own, in which he omitted, apparently by inadvertence, the item of $12\frac{1}{2}$ *topas* per *manī* for *malikana*. He observed that the *Rabi* of 1916 was a very poor one (though the Naib-Tahsildar had definitely found that on this particular area it was the best harvest for six years). He also drew an inference, unfavourable to the landlord, from the fact that he had not attended on the land to take his share of the produce, although served with a notice to do so. On this point, there is some obvious misapprehension. The proceedings were for appraisement and not for the division of the produce, and were already complete before the tenants asked that the landlord should be required to attend to receive his share. On further appeal, the Commissioner observed that the rates awarded by the Naib-Tahsildar were excessive, because they were not in accordance with "the normal rates laid down in the Financial Commissioner's circular, by which such cases are governed." The reference here is to paragraph 12 of the Financial Commissioner's Standing Order No. 2 and to certain paragraphs of the Land Administration Manual there referred to. The object of the executive instructions there given is to provide the revenue Courts with a means of calculating the probable produce and its probable selling value, from the records of inspection, the Settlement Officer's estimate of average out-turns and other available

sources in those cases in which reliable evidence of the *actual* produce and *actual* selling price is not available. The Courts generally have to calculate the amount and cash value of rents in kind after a crop has been removed, and the oral evidence which is adduced on such subjects is coloured by the predilections of the witnesses. It is, therefore, essential that they should be supplied with the means of arriving at a reasonably equitable estimate, even though it be an estimate for an average or normal crop rather than for the actual particular crop which is the subject of litigation. But if the actual particular crop has been seen on the spot and appraised by a reliable and qualified appraiser, there is no reason for having recourse to a calculation of the kind which is inevitable when no evidence of this character is available.

But in legal form, the mistake made by the lower Courts is this. They have created a conclusive presumption in favour of a calculation, made on the basis of certain executive instructions which were drawn up to help the Courts to frame a reasonably equitable estimate of produce rents in cases in which reliable evidence of actual produce and actual value is not forthcoming: and have conceived themselves precluded from accepting evidence of the actual produce, because it involved a departure from that calculation. But there is no conclusive presumption in favour of the calculation for which the Financial Commissioner's executive instructions provide. There is only a conventional presumption in favour of its accuracy, when reliable evidence of the particular crop cannot be had.

In the present case the evidence, which deserved most weight and which would have been followed but for mistakes in the application of the law, was the record of the appraisement. The mistakes were these. In the first place, it was held that an appraisement under Chapter II of the Punjab Tenancy Act is not valid unless the tenants assent to it, whereas the assent of neither landlord nor tenant is essential to its validity. In the second place, it was held by implication that the record contained in the appraisement proceedings was not admissible in evidence, or at all events not worthy of credence: and it was also held, by implication, that there is a conclusive presumption, in suits for the value of produce rents, that produce calculated according to the Financial Commissioner's instructions in paragraph 12 in Standing Order No. 2 is the actual produce of the particular land in the particular harvest in suit. It is true that the Revenue Officer, dealing with the appraisement proceeding, failed to give effect to the direction in S. 19 (2) of the Punjab Tenancy Act, which requires him to make an order either confirming or varying the appraisement. But this omission did not affect the admissibility or the value of the evidence contained in the appraisement record.

Following the appraisement and adding one anna in the rupee on

account of the *malikana* due, I accept the applications in cases Nos 60, 61, 62, and give amended decrees as follows :—

No. 60 (Original Case No. 22) Rs. 25-0-0,

No. 61 (Original Case No. 23) Rs. 100-2-0,

No. 62 (Original Case No. 21) Rs. 30-6-1,

with the costs of the present proceedings in favour of the applicant.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

Revenue.

No. 300 of 1916-17. (Decided on 23-2-1918).

Maynard. F. C.

CHOWDHRI THAKAR DAS

Applicant

Versus

SULTAN BAKHSH and others

Respondents.

Punjab Land Revenue Act, S. 111—Mortgagee with possession of an undivided share in joint property—not consenting to partition—effect of.

A partition effected with the consent of the joint owners of the land is not invalidated by reason of the lack of the consent of a mortgagee with possession of an undivided share in joint property and the mortgagee has no claim to be made a party to the partition proceedings. He has a locus standi to interfere only when the property to be partitioned is a tenancy, of which he is technically a landlord, i. e., a person under whom tenants hold land and to whom the tenants are, or would be, but for a special contract, liable to pay rent.

Revision from the order of Commissioner, Multan Division.

ORDER.

I have heard counsel for both the parties. The partition as effected is admittedly not in accordance with the sanctioned mode of partition. On the other hand, it is admitted before me that the allegation in clause (b) of the third ground of revision is not in accordance with fact. The actual mode differs from the sanctioned mode in this, that lots were not cast for the portions assigned to each, but each co-sharer took such land as he agreed to take. The actual partition was in effect a partition authoritatively made in accordance with the consent of the co-sharers. The applicant objects that, as mortgagee, with possession of an undivided share, he was entitled to be treated as a party to the partition proceedings, and that those proceedings are irregular because he did not consent to the departure from the sanctioned mode.

A mortgagee with possession is a landowner within the meaning of the Land Revenue Act, (S. 3 (21)). But the Act does not employ the expression "landowner" in determining who are the persons who have a right to apply for partition. The words of S. 111 are: "Any joint owner of land, or any joint tenant of a tenancy in which a right of occupancy subsists." In the remainder of the Chapter on partition, the expressions "owner," "joint owner," "co-sharer" are in various passages employed, and there is a provision that, on an application for the partition of a tenancy, the objection of the "landlord" (which includes a mortgagee with possession) may be a sufficient reason for absolute disallowance. The word "landowner" only occurs twice in the Chapter; once in S. 125, which does not deal with partition but with periodical redistribution of land in an estate which is subject to that custom; and once in S. 110, where it is provided that a partition shall not in ordinary course affect the joint liability for the land revenue. There is every indication of the precise and careful use of language throughout the Chapter, and it does not appear to be the intention of the framers of the Act to recognise the claim of a mortgagee with possession, as such, to intervene in partition proceedings, or to be a party to them, except when the property to be partitioned is a tenancy of which he is technically the "landlord," that is to say, the person under whom the tenants hold land and to whom the tenants are, or would be but for a special contract, liable to pay rent,

In the present case, it is alleged by the mortgagee that the mortgagors have colluded with the other co-sharers to injure him, and, with this object have accepted as their share land having inferior advantages in respect to irrigation. It is not alleged that, by reason of this supposed collusion, the land which has fallen to the share of the mortgagors is of less value than the amount of the mortgage debt. But a mortgagee, alleging injury to his interest by the collusive proceedings of his mortgagor, can claim his remedy by regular suit in the civil Courts. A dispute of this character does not come within the functions of a Revenue Officer dealing with a partition under the Land Revenue Act.

The partition effected in this case with the consent of the joint owners of the land is not invalidated by reason of the lack of the mortgagee's consent and the mortgagee had no claim to be made a party to the partition proceedings.

Revision rejected. The applicant to pay the respondent's costs in these proceedings.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue

No. 11 of 1917-18. (Decided on 20-2-1918.)

*Maynard, F.C.*SANWAN SINGH and other..... *Applicants.**Vesrus*BUTA..... *Respondent.***Punjab Tenancy Act, S. 13—Mortgagee with possession—whether can commute rent in kind into cash rent.**

A mortgagee with possession is certainly a landlord during the term of the mortgage, but under S. 13 the rent in kind cannot be commuted for a rent in cash without the consent of the mortgagees as well as the consent of the tenants. It is a general principle of law that a mortgagee is not entitled to change the terms of a lease of property mortgaged to him. No doubt it is open to him, if he should desire to do so, to waive the recovery of rent during the continuance of the mortgage. If he had the power to do more than that, his rights as mortgagee would be extended beyond the term of the mortgage which is the occasion of their existence. It would not be within the scope of the Punjab Tenancy Act to give to a mortgagee such extended rights and S. 13 of the Act does not, in effect, confer any such authority.

Revision from the order of Commissioner of Jullundur Division.

ORDER.

I have heard counsel for the parties. The landlord sued his tenants for the value of rents in kind. They pleaded that the mortgage of the land had prior to its redemption, commuted the rent in kind for a rent in cash. The first court decreed the claim and the Collector, in his appellate order, said that the landlord is not bound by the arrangement made by the mortgagee. The Commissioner reports the case for orders on the ground that the mortgagees were the landlords within the meaning of S. 13 of the Tenancy Act, at the time when they agreed to commutation of the rent in kind.

The mortgagees were certainly the landlords during the term of the mortgage, and under S. 13 the rent in kind could not have been commuted for a rent in cash without the consent of the mortgagees as well as the consent of the tenants.

But the point which I have to decide is a different one. The question is whether the consent of the mortgagees and the tenants was sufficient to validate the commutation. If every person, who is, for the time being, technically the landlord of land, is entitled to give validity by his consent to a change in the method by which the rent is paid, it would be open to a widow having only a life interest, or a mortgagee whose mortgage is on the point of redemption, or a person holding a temporary farm of land for the recovery of an arrear of land revenue or by order of a Court executing a decree, to impair very seriously the value of the landlord's rights by agreeing to an unfavourable commutation.

It is a general principle of law that a mortgagee is not competent to change the terms of a lease of property mortgaged to him. No doubt it is open to him, if he should desire to do so, to waive the recovery of rent, or part of the rent, during the continuance of the mortgage. If he had the power to do more than this, his rights as mortgagee would be extended beyond the term of the mortgage which is the occasion of their existence. It would not be within the scope of the Punjab Tenancy Act (which, by a preamble, purports to amend the law relating to the tenancy of land) to give to a mortgagee such extended rights: and section 13 of the Act does not, in effect, confer any authority such as is suggested in the order under reference.

Revision rejected.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings.

1919.

IN THE COURT OF FINANCIAL COMMISSIONER, PUNJAB.

Revision Side.

Revenue.

No. 24 of 1918-19 (Decided on 29-5-1919)

Maynard, F.C.

RAM CHAND and others..... *Petitioners*

Versus

KISHAN CHAND and others..... *Respondents*

**Punjab Tenancy Act, Ss. 59, 111 and 112—effect of agreement—
on rule of succession.**

Held, that the provisions of the Tenancy Act in regard to the alienation of, and succession to, an occupancy tenancy may be overridden by an agreement valid according to the provisions of S. 111 or 112 of the Punjab Tenancy Act.

16 P.R. 1915 ; 97 P.R. 1909 ; 22 P.R. 1914 ; 47 P.R. 1877 ; 64 P.B. 1877 ; 22 P. R. 1882 ; 20 P.R. 1896 ; 196 P.R. 1889 ; 130 P.R. 1901 ; 76 P.L.R. 1908 referred to.

Record of rights—entries in revenue papers—interpretation.

Held, that an entry in an administration paper regarding a rule of succession to an occupancy tenancy may be viewed either as a record of custom or as an agreement under Ss. 111 and 112, Punjab Tenancy Act. As a record of custom, no doubt such an entry would at all events purport to be of permanent significance and there would be nothing surprising or suspicious about it if it appeared to be peculiarly favourable to one of the two parties concerned. But custom cannot override the provisions of the statutory law as regard to the alienation of, or succession to an occupancy tenancy. Such entries on the whole must be interpreted in a reasonable manner and as a whole with due

REV. 1.

reference to all the provisions which they contain and they cannot be construed so as to give in perpetuity to an occupancy tenant his heirs and assigns an unrestricted power of alienating his tenancy unless such an intention be expressed in clear and unambiguous language.

Practice—decisions of superior Courts—duty of subordinate Courts.

Held, that it always open to the subordinate courts to consider previous decisions of the highest Revenue Court, which appear to be relevant to the decision of a case pending before them and it is desirable that they should follow such decisions, even when unpublished, where it is perfectly certain that the facts are all in all respects similar and the issue is the same. But there are obvious reasons for treating unpublished rulings with more caution than published rulings.

Held, on the facts, that the entry in question did not give the occupancy tenants a right to alienate their occupancy tenancy without the previous consent of the landlord as required by S. 56. 38 P.R. 1910 followed.

Revision from the order of the Commissioner, Jullundur.

Petitioners :—by Hon'ble Mr. Muhammad Shafi.

Respondents :—by Messrs. Beechey and Nanak Chand.

ORDER.

I have heard the counsel for the parties. The principal question is whether certain entries in successive administration papers of the village of Malout constitute an agreement whereby the applicants who are occupancy tenants but not under S. 5 are at liberty to alienate their occupancy rights without the previous consent in writing of the landlord, which S. 56 of the Punjab Tenancy Act makes a normal condition of such alienations.

The entries in question are these. In clause No. IV of the administration paper of 1857 the following passage occurs :—

“The tenants cultivating the land for more than 10 years have been classed as *qadim* and those of less than 10 years' standing have been classed as *jadid*. The *qadim* tenants can either cultivate their tenancies themselves or can derive a profit by having them cultivated by others. They can sell or alienate their right of cultivation (*haqq kasht*). The *jadid* tenants cannot have their lands cultivated by others.” This is the document upon which the names of some of the landlords appear and the natural construction to be put upon the passage cited is that it defines the conditions upon which tenants may, or may not, pass on the right of cultivation to others. The Settlement Officer's final *rabkar* dated September 12th, 1858 uses similar language regarding the power of transfer of the right of cultivation (*haqq kasht*). And in a later passage of the *robkar* the settlement officer goes on

to say that the tenancy shall go to the landlords, in the absence of descendants or co-tenants, on the death of a tenant, whether *qadim* or *jadid*.

An entry similar to that of the *robkar* above cited is repeated in the administration paper of 1882, with a preamble setting forth that the entry is made in accordance with S. 2 of the Tenancy Act of 1868 (which provided that entries in the record of a regular settlement sanctioned by the Local Government before 1871, regarding alienation of occupancy tenancies among other matters, were to be deemed to be agreements, remaining operative in spite of anything contained in the Act of 1865). In clause No. 19 of the administration paper of 1900-01, the following language is employed :—

“ The tenants of more than ten years' standing are classed as *qadim* and those of less than ten years' standing are classed as *jadid* in accordance with (the entries in past Records of Rights). The *qadim* tenant.... is entitled to sell or transfer his cultivator's right (*haqq kashtkari*)”.

These successive entries have the superficial appearance of being virtually verbatim repetitions of one and the same set of statements. But it was a very different thing to be a tenant of ten years' standing in 1882, from being a tenant of ten years' standing in 1857. And it was a still more widely different thing to be a tenant of ten years' standing in 1900-01. Plainly, the drafters of the paper of 1882, and, still less, those of the paper of 1900-01, did not mean what they said when they assigned large powers and a special security and a special devolution of tenure to persons who had been occupying land for ten years at each of these two dates respectively. The laxity of the language employed shows that former entries were repeated without any serious consideration of the significance to be attached to them. The later entries must be left entirely out of account in determining whether the occupancy tenants of the land now in dispute had or had not a right of alienating the tenancy, without the landlord's consent. If such a right exists, it can only exist in virtue of the entries of 1857 and 1858, authorizing the tenant, as successor-in-interest of persons who were “ *qadim* ” tenants at the date, to exercise it.

Throughout the proceedings in this case *Hira v. Muhamadi* (1) has been cited as an authority for the view that an entry in the administration paper of a village constituting an agreement under S. 111 or 112, Punjab Tenancy Act is in force only for the term of the settlement. What the Chief Court in that case actually said was that, in the absence of an express intention to the contrary, agreements recorded in a settlement record are not intended to take effect after the expiry of the period of the settlement. The learned Judges cited in support of this *Fateh Baksh v. Lehna* (1) 16 P. R. 1915 : 64 P.L.R. 15.

(2) (a case in which the agreement was expressly limited to the term of one settlement) and *Musammat Narain Devi v. Hira* (3) (where the record did not fulfil the conditions of S. 112, Punjab Tenancy Act, because it was prepared after 1871).

I have examined a number of rulings, *Ranjha v. Chuhan* (4) *Jowahir Singh v. Assa* (5) *Lehna v. Chetu* (6) *Phina Singh v. Mahtab Khan* (7) *Jiwan v. Ibrahim* (8) *Puran v. Mamun* (9) which show that, in the matter of alienation of or succession to occupancy tenancies, the Chief Court of the Punjab had not prior to the ruling in *Hira v. Muhammadi* (1) dealt with the question of the validity of entries in a village administration paper, regarded as agreements under the Punjab Tenancy Act, after the expiry of the term of the settlement for which the administration paper was prepared. Nor has the unpublished ruling of the Financial Commissioner in Revision No. 150 of 1898-1899 any bearing upon this particular point; because in that case it was held that the agreement of 1857 had been repeated in the Settlement of 1882. All that emerges from all these rulings is this; that the provisions of the Tenancy Act in regard to the alienation of, and succession to, an occupancy tenancy may be overridden by an agreement, valid according to the provisions of Ss. 111 and 112 of the Punjab Tenancy Act. They do not decide for how long a period such an agreement is to be regarded as remaining valid, or whether there is any term to its validity and *Hira v. Muhammadi* (1) stands alone as an authority on this subject.

In *Allah Ditta v. Achru Mal* (10) it was pointed out that an entry in an administration paper regarding a rule of succession to an occupancy tenancy may be viewed either as a record of custom or as an agreement under S. 111 or 112, Punjab Tenancy Act. As a record of custom, no doubt such an entry would at all events purport to be of permanent significance and there would be nothing surprising or suspicious about it if it appeared to be peculiarly favourable to one of two parties concerned. But custom cannot override the provisions of the statutory law in regard to the alienation of, or succession to an occupancy tenancy. As an agreement, the learned Chief Judge went on to point out, an entry of this kind must be interpreted in a reasonable way: and when it employs vague language

(2) 97 P.R. 1909 : 10 P.L.R. 1910.

(3) 22 P.R. 1914 : 12 P.L.R. 1914.

(4) 47 P.R. 1877.

(5) 64 P.R. 1877.

(6) 22 P.R. 1882.

(7) 20 P.R. 1896.

(8) 196 P.R. 1889.

(9) 130 P.R. 1907 ; 76 P.L.R. 1908.

(10) 38 P.R. 1910 : 182 P.L.R. 1910 : 60 P.W.R. 1910.

as *e. g.*, in saying that the succession should go to ("*bhaiyya karabati*") a reasonable interpretation is to be put upon that language. Now, in order to enable this Court to accept the contention that the occupancy tenants were entitled to alienate in the present case without the landlord's consent, it would be necessary to hold that the language of the records of 1857-1858 was intended to make for an unlimited period the concession of complete liberty of alienation of their tenancies to all persons who had at that time held them for ten years: and that it was intended for an unlimited period to provide the holder for the time being of such a tenancy, whether a holder by succession or by purchase, with the power to defeat, by alienation, that right of the landlords, which is clearly set forth in the same record and almost in the next sentence, to succeed to the tenancy when descendants or co-tenants fail. Though an agreement of this one-sided character would have been less surprising in 1857, when tenants were possibly not easily obtained, than at a later date, it does not appear to this Court that this is a reasonable interpretation to attach to the records of 1857 and 1858: and there does appear, on the contrary, to be an irreconcilable contradiction between the interpretation for which the applicants contend and that clause in the Record of Rights which affirms the rights of the landlord in event of the failure of heirs.

Without, therefore, affirming that in the absence of an expressed intention no agreements recorded in a settlement record are intended to take effect after the expiry of the period of the settlement, I hold that such entries must be interpreted in a reasonable manner, and as a whole with due reference to all the provisions which they contain: and that they cannot be construed so as to give in perpetuity to an occupancy tenant, his heirs and assigns an unrestricted power of alienating his tenancy, unless such an intention be expressed in clear and unambiguous language, uncontradicted by other provisions, such as those regarding the treatment of a tenancy on failure of heirs. In the present case the view taken by the Commissioner, that the provisions of 1857 were an attempt to define in a rough manner some form of fixity of tenure, at a time when there was no statute law regulating the incidents of occupancy tenancy, appears to be the correct and reasonable view. They constitute what is technically an agreement under S. 112, Punjab Tenancy Act. But the agreement does not bear the construction which it is sought to put upon it.

In the first ground of revision, it is urged that it was the duty of the learned Commissioner to decide this case in accordance with the ruling of the Financial Commissioner in Revision Case No. 150 of 1898-1899. In that case it had been definitely held that the entries of 1857 were repeated in the record of 1882. In other respects, the facts appear to have been similar to those of the present case: but, as is very natural in an unpublished ruling, they are not set forth with that fullness which can alone enable

a Court to satisfy itself that it has before it a ruling applicable to the facts of the case which it is considering. It may be taken for granted that a Court whose decisions are binding upon subordinate Courts, will when declaring a ruling upon a question of law upon which previous authoritative decisions are lacking, take steps to publish its decision. In such a case the facts will be set forth in full detail, so that subordinate Courts may find the guidance which they require. As I have pointed out above, the Financial Commissioner's decision in revision No. 150 of 1898-1899 did not purport to decide anything more than that an agreement regarding the right of alienation recorded in the Settlement Record of 1882 was valid as between the landlord and the occupancy tenant in 1898. From that view I do not dissent : but that is not the point upon which the decision of the present case turns. It is always open to the subordinate revenue Courts to consider previous decisions of the highest revenue Court which appear to be relevant to the decision of a case pending before them : and it is desirable that they should follow such decision, even when unpublished where it is perfectly certain that the facts are in all respects similar and the issue is the same. But there are obvious reasons for treating unpublished rulings with more caution than published rulings.

There appears to be no ground for the contention in head 6 of the petition of revision that the plaintiffs-respondents were by their own acts and conduct estopped from questioning the alienation in dispute.

The application for revision is rejected,

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 213 of 1918-19. (Decided on 14-11-1919),

Maynard, F. C.

HARBANS SINGH

Applicant.

Versus

SARDAR GAJJAN SINGH.

Respondent.

Zaildar—appointment of a practising pleader.

Held, whether a pleader is or is not suitable to be appointed a zaildar is a question to be dealt with according to the circumstances of each case. 3 P. R. 188 7(Rev) referred.

Revision from the order of Commissioner of Jullundur.

ORDER.

The parties are represented before me and I have heard the pleader for the applicant. It is admitted that the Hon'ble S. B. Gajjan Singh, O. B. E., is a practising pleader and the question is whether he ought to be excluded from the office of Zaildar for that reason.

In *Ghulam Niaz Khan v Achal Singh* (1) a learned predecessor in the office of Financial Commissioner laid down the principle that "the duties of these two honourable offices, Zaildar and Pleader, cannot properly be discharged simultaneously by one person."

In most, perhaps in nearly all cases, a pleader is, by the nature of his legal and professional functions, unable to discharge to satisfaction the duties of a Zaildar. The Hon'ble S. B. Gajjan Singh has, however, by his exceptional services during the war, given a convincing demonstration that he is not unable to discharge such duties.

Whether a pleader is or is not suitable to be appointed to be a Zaildar is a question to be dealt with according to the circumstances of each case. In this case I find that the accepted candidate was suitable for appointment notwithstanding the fact that he is a practising pleader and I reject the application.

Revision rejected.

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB,

Appellate Side.

Revenue.

No. 40 of 1918-20. (Decided on 23-12-1919.)

Maynard and Fagan, F. Cs,

MST. JIWANI

Appellant.

Versus

GANGA RAM

Respondent.

**Appointment of female—only relation of founder of village—
widows of headman—village unusually compact,**

A female is not ordinarily eligible, but may be appointed when she is the sole owner of the estate or for special reasons in other cases. Neither sole ownership nor any other feature in the position of the individual concerned gives to a woman a right to the appointment. But there are features, among which sole ownership is one, which may justify an appointing officer in selecting a women in spite of her sex, if there are not sufficient counter-vailing considerations of another order. It is plainly because of a presumed physical or social incapacity in a woman as such that the law requires that her appointment to the office of headman shall be justified by special reasons. But if there are facts, which indicate, in a particular case that the difficulties arising from the presumed physical or social incapacity are less than ordinary, such as, for instance, the comparative lightness of the task of a headman in a particular estate, this may justify a departure from ordinary canon.

Where an intelligent widow was the sole surviving representative of the family (into which she passed by her marriage with the deceased headman) of the founder of the village and the village was unusually compact with a small number of proprietary holding and a small number of resident owners so that the task of lambardar was comparatively light held, that special reasons

(1) 3 P. R. 1887 (Rev.)

existed for her appointment according to the new rules, in spite of the fact that she was not the sole owner. 6 P.R. 1894 (Rev.) distinguished.

Appeal from the order of officiating Commissioner of Ambala.

ORDER

Maynard and Fagan F.C.—The facts of this case are sufficiently stated in the Settlement Officer's order, appointing the widow of the deceased lambardar to succeed to the post and in the Commissioner's appellate order. The deceased was a Dhelon Jat, who represented the family of the founders of the village. His death has left no representative other than this widow of the founders of the village. The widow has succeeded to 276 bighas of land free of mortgage. There are only eleven resident owners and thirteen proprietary holdings, so that the work of the lambardar is not of a heavy kind. The Settlement Officer notes that the widow is an intelligent woman, about twenty years of age.

In his appellate order, the Commissioner cites Land Revenue Rule 17 (d) and correctly remarks that there must be some special reason to justify the appointment of a female as lambardar, if she is not the sole owner of the estate. He then goes on to cite *Mst. Subajan v. Amirulla* (1) for the ruling that the appointment of a female lambardar is always objectionable on the ground of personal unfitness: and that a woman can only be appointed under such circumstances as would also justify the appointment of an unfit man. At the time when this ruling was delivered there was no rule under the Land Revenue Act dealing specifically with the circumstances in which a woman may be appointed to the post of lambardar. Our learned predecessor arrived at the conclusion embodied in his ruling by deduction from those provisions of the rules which indicate that "physical or mental incapacity" and "being shown to be incompetent" are grounds on which a Collector may refuse to appoint a person claiming as an heir, and from certain general considerations. The general considerations are first that the post of lambardar involves duties in connection with the collection of revenue with, police, and with executive matters, which it would be quite impossible for any woman to fulfil in a satisfactory manner, and secondly that the social conditions in India are such that a woman can only work through an agent.

The law has been changed and made more definite since *Mst. Subajan v. Amirulla* (1) was delivered by the enactment of the rule already cited, which provides that a female is not ordinarily eligible, but may be appointed when she is the sole owner of the estate, or, for special reasons, in other cases. The question in the present case is whether the appellant has established special reasons justifying a departure from the ordinary canon of eligibility.

(1) 6 P. R. 1894 (Rev.)

One class of special reason justifying a departure from the ordinary canon arises, evidently, out of consideration for something special in the position of the individual concerned. A person may be a sole owner of an estate in which there is a large number of tenants and *kamins*, and the police and executive duties involved may be as heavy as though there were many owners. Yet the law recognises sole ownership as one of the reasons, which may justify the appointment of a female, despite those difficulties in the discharge of the functions upon which *Mst. Subajan v. Amirulla* (1) lays stress. This, no doubt, is because the law also makes provision for the appointment of a substitute (rule 27) in certain cases, including the contingency of physical infirmity, to which that arrangement is appropriate. Neither sole ownership, nor any other feature in the position of the individual concerned, gives to a woman a right to the appointment of headman. But there are features, among which sole ownership is one, which may justify an appointing officer in selecting a woman in spite of her sex, if there are no sufficient countervailing considerations of another order.

It is plainly because of a presumed physical or social incapacity in a woman, as such, that the law requires that her appointment to the office of headman shall be justified by a special reason. It follows that there is a second class of special reason which may justify a departure from the ordinary canon: namely, facts which indicate, in a particular case, that the difficulties, arising from the presumed physical or social incapacity, are less than ordinary. The comparative lightness of the task of a headman in a particular estate may be a reason of this character.

In the present case there are two reasons, one belonging to the first, and the other to the second class of reasons above specified. There is this special feature in the widow's position that she is the sole surviving representative of the family (into which she passed by her marriage with the deceased headman) of the founder of the village. This feature does not give her a right to the appointment, but it may properly be taken into account (as it was taken into account) by the appointing officer in weighing the considerations for and against her appointment.

The village is unusually compact, with a small number of proprietary holdings and a small number of resident owners, so that the task of the lambardar is comparatively light. For these reasons we hold that the special reasons required by the rule are established.

Social conditions in the Punjab are, no doubt, still unfavourable to a woman working otherwise than through an agent: but the law provides for the appointment of a substitute if such an appointment be necessary, and the unfavourable social conditions are subject to a gra-

dual modification and are not immutably operative without variation in the circumstances of particular cases.

Accepting the appeal, we restore the order of the Settlement Officer and appoint Mst. Jiwani to be *lambardar* with costs in her favour in the present proceedings.

Appeal accepted.

IN THE COURT OF FINANCIAL COMMISSIONER, OF THE
PUNJAB.

Revision Side,

Revenue.

No. 6 of 1918. (Decided on 17-2-1919.)

Maynard, F. C.

SALIH MOHAMMAD *Applicant*

Versus

MEHAR SINGH. *Respondent.*

**Punjab Alienation of Land Act, S. 16 and S. 72, C. P. Code—
land of an agriculturist judgment-debtor—temporary alienation of.**

Held, that the land of a member of an agricultural tribe is liable after attachment to be dealt with under S. 72 of the C. P. Code, 1908 and the proposal of the collector to effect a temporary alienation of the land is no way irregular, or contrary to law or without jurisdiction. The object of the section is to avoid the evils of the sale of the agricultural land in execution of decrees by providing an alternative process of a more equitable and less harsh description.

A representation by a Collector that an order of sale is illegal by reason of S. 16 (i) of the Punjab Alienation of Land Act would fall within the language of the section.

The position of a Revenue Officer executing the decree of a civil Court by the attachment of land or by temporary alienation or otherwise is that of a ministerial officer of the Civil Court, taking his orders from such Court, and he has no power to order a temporary alienation. 8 P. R. 1917 (Rev), referred to. 4 P. R. 1903 followed.

Revision from the order of the Commissioner, Rawalpindi Division

ORDER.

I have heard counsel for both parties in this case. Mehar Singh, respondent, obtained a decree from a civil Court for Rs. 572 against Salih Mohammad, applicant, who was described as a Rajput Bhatti. The judgment-debtor's land in two villages was attached in execution. The Court executing the decree twice asked the Collector whether he would intervene with a proposal for temporary alienation under S. 72 of the C.P.C. On the first occasion, the Collector declined to do so, on the ground that the land was not more than sufficient for the maintenance of the judgment-debtor and his family. On the second occasion, the Collector re-examined the figures, took into account the remittances made by the

judgment debtor's sons and ordered that the civil Court should be informed that he was ready to arrange for a temporary alienation for twelve years of a part of the land, viz., that situated in the village of Bohra. This land consists of 76 kanals, of which 8 are already mortgaged. The remaining land which under this proposal, would remain for the maintenance of the judgment-debtor, consists of 103 kanals, 50 cultivated and 53 waste, in the village of Mohra Shaikhani. The fact that the applicant is of an agricultural tribe is sufficiently proved.

No order of temporary alienation has been passed. The judgment-debtor lodged an appeal against the Collector's report to the Civil Court, expressing his willingness to arrange for a temporary alienation. The Commissioner rejected that appeal, remarking that the judgment-debtor was merely endeavouring to avoid payment of his debts and that he was being left with ample means of subsistence.

The proposal of the Collector to effect a temporary alienation was recorded in the absence of the judgment-debtor, who was held to have been present outside the Court but to have deliberately evaded attendance. The grounds of revision before this Court are taken up mainly by the contentions that the judgment-debtor was not responsible for his absence, and that the proposal (throughout described, and quite incorrectly described as an order) of temporary alienation, made in his absence, was irregular. The other contentions are that the so-called order was improper because the Revenue Assistant had reported, against it, that the Collector had already decided not to propose a temporary alienation, and that the subsistence left to the judgment-debtor is inadequate.

None of these contentions has any force as a ground of revision, and I find it unnecessary to discuss them. The case for the applicant has been put before me on quite other grounds, which require consideration. Briefly they are these; that the judgment-debtor is a member of a notified agricultural tribe, that a sale in execution of decree of land belonging to a member of an agricultural tribe is illegal under the provisions of S. 16 (1) of the Punjab Alienation of Land Act, and that, as S. 72 of the Code of C.P. requires that the Collector's representation is to be made with reference to, and in view of a proposal to sell attached land, no temporary alienation of such land can be made by the Collector under the Section cited.

Ahmad Khan v. Parmanand (1) is in point. But in that case the Revenue Officer had himself ordered a temporary alienation by his appellate order. Such an order was clearly without any legal authority, and the claim of the judgment-debtor in that case must inevitably have

(1) 8 P.R. 1917 Rev. : 1917 P.C.L. 10 (Rev.)

failed for that reason. The position of a Revenue Officer executing the decree of a civil Court, by the attachment of land or by temporary alienation or otherwise, is that of ministerial officer of the Civil Court, taking his orders from such Court, and he has no power to order a temporary alienation.

Having ruled in the case above cited that the whole procedure in the Assistant Collector and the Collector's Courts had been irregular and *ultra vires*, for reasons which I have summarised above, my learned colleague, the Hon'ble Mr. Fagan, proceeded in a paragraph 6 of his judgment to consider what would have been the correct procedure for the Assistant Collector to adopt. He expressed his dissent from the dictum of the Hon'ble Judges of the Chief Court in *Badar Din v. Bura Mal* (2) that the land of a member of an agricultural tribe was liable after attachment to be dealt with under S. 326 of the C. P. C., corresponding to S. 72 of the present Code. Briefly his reason for this view is that a proposal for the sale of such land can only be made by mistake, that no representation by the Collector under S. 72, C. P. C. is legally possible, and that, therefore, no temporary alienation of the land of a member of an agricultural tribe can be made by the Collector under the authority of that section. It is important to note that this conclusion was formulated after it had been made clear that the application for revision must be accepted for quite other reasons.

I have examined the history of S. 72 of the present C. P. C. Something like it appeared in the Code of 1859 (S. 244 of that Code) and the discussions in Council upon that Code and upon the later Code of 1876 (where it appears as S. 325) make it plain that the object was to avoid the evils of the sale of agricultural land in execution of decree by providing an alternative process of a more equitable and less harsh description). In moving that the report of the Select Committee on the Bill of 1877 be taken into consideration, the Hon'ble Sir A. Hobhouse quoted his own words spoken on a former occasion, with reference to the provisions relating to execution sales as follows:—

“ These provisions constitute the principal alteration which we propose in the Code and our object has been to alleviate the harshness and rigidity of the law, to diminish the number of forced sales, and to get for the owner of the land something like an adequate value for it: at the same time keeping in mind the important principle one of the most important objects of all civilized society—that a man should perform his contracts and pay his debts to the best of his ability.

These may, then, be taken, as the double objects of that portion of (2) 4 P. R. 1908.

the C.P.C. which deals with execution of decrees upon land, and in particular of S. 72 which provides a procedure for recovery of the judgment-debt from land without sale. There is nothing, of which I am aware, in the discussion which preceded the framing of the Punjab Alienation of Land Act to indicate that its framers intended, when prohibiting the sale in execution of decree of land belonging to members of notified agricultural tribes to prohibit also the alternative method of temporary alienation, which had been introduced into the law with the double object of diminishing the number of forced sales, and of securing as far as possible the payment of just debts from the produce of land. It is in the highest degree improbable that they would deliberately have made so far reaching a change, without a definite statement of the specific intention to do so. If, then, the effect of S. 72 of the C.P.C. read with S. 16 (1) of the Punjab Alienation of Land Act be to prevent a civil Court from authorising a Collector to satisfy a decree by a temporary alienation, it is a purely accidental effect, due to oversight in the framing of the latter Act.

I do not think that there has been any such oversight or accident, or that S. 72 has the meaning which has been attributed to it by my learned colleague. Notwithstanding the prohibition of the alienation of the land of a member of an agricultural tribe, there still remain instances in which a Collector might find it necessary to represent to a Court that a sale was objectionable. obvious instances are those of a person whose status as a member of an agricultural tribe was in dispute, or whose status was discovered after an order of sale had been passed. It seems equally plain, moreover, that a representation by a Collector that an order of sale is illegal by reason of S' 16 (1) of the Punjab Alienation of Land Act would fall within the language of the section, and that an order does not cease to be "objectionable" because it is contrary to law. The word "objectionable" would appear to be applicable to any process to which objection may legally be taken.

In the present case, the Collector has never, in so many words represented to the civil Court that the sale of the land is objectionable; but I think I should be placing a strained interpretation upon the section if I were to argue that the absence of such a formal representation, made in a particular form of words, has the effect of rendering illegal the application of the important execution process for which the section provides. When a Collector proposes to satisfy a decree by a temporary alienation of land, it is plain that he holds a sale to be objectionable, and neither his proposal, nor the authorisation thereafter given to it by the Court would appear to be invalidated by the fact that he has not said that sale is objectionable. Following the interpretation of the Chief Court in *Badar Din v. Bura Mal* (2) I hold that there is no reason for doubting that (the land of a member of an agricultural tribe is liable after attachment to be

dealt with under S. 72 of the C.P. Code, 1908, and that the proposal of the Collector to effect a temporary alienation of the land of judgment-debtor in this case was in no way irregular or contrary to law and was not made without jurisdiction. The application for revision is, therefore, rejected.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 111 of 1918-19. (Decided on 2-11-1919).

Maynard, F. C.

GILANI SHAH and another. Petitioners

Versus

MST. HASSAN and others. Respondents.

(i) Punjab Tenancy Act, Ss. 4 (15) and 5 (1) (d)—Muafi granted as 'haq murshadi' the right of spiritual leadership—muafidars in such a case are jagirdars and not village servants.

Where the records showed that a muafi had been granted either on account of spiritual leadership or as a grant-in-aid of subsistence and contained no reference to the service of the shrine or to expenditure upon a fair held there, held, that the muafi was not granted in return for service and the muafidars were not village servants but jagirdars, and fulfilled the requirements of S. (5) (1) of the Punjab Tenancy Act to be occupancy tenants under S. 5 (1) (d)

(ii) Punjab Land Revenue Act, S. 28—Special Kanungos-functions of Evidence Act, S. 65 (g).

Held, that although it is one of the functions of the Special Kanungos to give evidence under S. 65 (g) of the Evidence Act when there are numerous documents which cannot be conveniently examined in Court as to the general result of the whole collection; it is an abuse of their functions to require them to give oral evidence of the contents of a document which ought to be examined in original by the Court itself.

Revision from the order of Collector of Gujranwala. forwarded by the Commissioner of Lahore.

ORDER.

I have heard counsel for the parties. The case is one in which the Special Kanungo for the examination of land records was employed by the first Court to report on the contents of the records relating to the *Muafi* of the land in dispute. The Special Kanungo examined the *Muafi* file of 1890 and reported thus:

"This *Muafi* is for the expenses of the shrine of Pir Abdul Kadir. The *Muafidars* perform, by their servants, the service of that shrine, in consideration of which the *Muafi* is granted. The shrine is kept up. This *Muafi* was for the expenses of the fair which used to take place at the shrine of Abdul Kadir."

These words were taken from the statements of the Patwari and Lambardar.

The first Court, accepting this report as evidence of the contents of the records, held, that the *Muafi* was granted for the maintenance of a village shrine, and that the the income was intended to quoted when the circumstances are such as to justify it. Another of their functions is to put the Records before the Courts in order that the Courts may examine them for themselves: and, when directed to do so, to draw attention to those parts of the Records which the Courts ought to examine. But it is a complete abuse of the functions of the Special Kauungos to require them to give oral evidence of the contents of a document such as the record of a *Muafi* enquiry which ought to be examined in original by the Court itself: and in the present instance this abuse has, owing to the inaccuracy of the oral evidence given by the Special Kauungo, resulted in a misapprehension of the facts and a wrong decision, necessitating interference upon the Revision Side.

The *Muafi* in this case was not a *Muafi* granted in return for service, and the *Muafidars* were not village servants, but jagirdars. They have fulfilled the requirements of S. 5 (1) of the Punjab Tenancy Act. Accepting the application, I find the applicants to be occupancy tenants under S. 5 (1) (d) and dismiss the suit for ejectment and give the costs of the proceedings throughout in favour of the applicants.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 93 of 1918-19. (Decided on 7-5-1919).

Maynard, F.C.

HAIDAR.....*Applicant*

Versus

CROWN.....*Respondent.*

Lambardar—succession—Neglect of duty—failure to assist in recruiting—whether a fit ground for exclusion of the family from succession to the office.

There are certain offences, which exclude and properly exclude, all members of the family of the offender from the office of lambardar. But the failure of a particular individual to assist in recruiting (unless he is a member of a

tribe or family which for specific reasons, e.g., the lack of connection with the classes from whom recruits are likely to be obtainable, is permanently unlikely to be successful in this respect) is not a matter which should exclude the claims of the family. It depends mainly upon personal character and energy in a case and it is not fair to assume that the son will lack the required qualities.

Revision from the order of the Commissioner, Lahore.

ORDER.

Ghulam Mohammad has appeared, and I have heard what he has to say. The hereditary claimant to this headmanship is Haidar. His father was dismissed from the post of lambardar for failure to assist in recruiting; and this has been treated as a ground for excluding the family from the succession. There are certain offences, which exclude, and properly exclude, all members of the family of the offender from the office of headman. But the failure of a particular individual to assist in recruiting (unless he is a member of a tribe or family, which for specific reasons, e.g., the lack of connection with the classes from whom recruits are likely to be obtainable, is permanently unlikely to be successful in this respect) is not a matter which should exclude the claims of the family. It depends mainly upon personal character and energy, and in a case such as the present it is not fair to assume that the son will lack the required qualities.

I set aside the order appointing Ghulam Mohammad to be lambardar and I appoint Haidar to be headman, on the understanding that his father will transfer to him a sufficient area of land. The choice of a *sarbrah* during Haidar's minority is left to the Deputy Commissioner,

Revision accepted.

LAHORE HIGH COURT.

Appellate Side.

Civil.

No. 233 of 1916. (Decided on 4-12-1919.)

Le Rossignol and Bevan-Petman, JJ,

GHULAM HAIDAR

*Appellant**Versus*

AMIR HAIDAR and others

Respondents.

Land Revenue Act, S. 158 (1) (2)—question arising out of proceedings for partition and not being a question of title—jurisdiction of Civil Courts excluded—Revenue Officer's exercise of power vested in him—Civil Court cannot take cognizance of the manner in which it is exercised.

S. 158 (2) of the Land Revenue Act excludes from the jurisdiction of the Civil Courts any question of title in any of the property concerned by the application for partition and S. 158 (1) prohibits a Civil Court from taking cognizance of the manner in which a Revenue Officer exercises any power vested in him under the Revenue Act. 104 P.R. 1900 ; 74 P.R. 1913 referred to.

First Appeal from the decree of Senior Subordinate Judge, Attock, at Campbellpur.

Appellant:—by Messrs. Nand Lal and Abdul Razaq.

Respondents:—by Mr. Fazl-i-Husain.

JUDGMENT.

Le Rossignol, J.—One Sarfraz Khan died in 1909 leaving two widows and two sons, one the plaintiff, the other defendant No. 1, also landed property in several villages, among others the land in village Sarga Brahma with which we are concerned in this appeal. In 1910 after some competition with Amir Haidar, the eldest son of Sarfraz Khan, Mst. Nur Ilahi was appointed by the District Judge, guardian of the property and person of her minor son Ghulam Haidar ; the same order accepted the appointment of Muhammad Sadiq to manage the minor's estate on behalf of the guardian. In May 1911, Amir Haidar applied to the Revenue Authorities for partition of the joint estate and the partition was completed in December 1912.

The present appeal arises out of a suit lodged on behalf of the minor in 1915 for a declaration that the land partitioned in 1912 is still the joint property of himself and his elder half-brother, Amir Haidar, defendant No. 1, and that, consequently, the partition of 1912 is not binding upon him. The plaintiff after setting forth the circumstances above recited alleges that Muhammad Sadiq betrayed his trust and colluded in the partition proceedings with defendant Amir Haidar with the result that the share of the land allotted to the plaintiff was of poor quality and comprised none of the land on which trees were growing and he asked for the relief above-mentioned on the following grounds:

- (1) that he was practically unrepresented before the Revenue Authorities;
- (2) that the partition had in fact resulted in great loss to him,
- (3) that in making partition the Revenue Officer has taken no account of the trees ; and
- (4) that the partition was effected without the sanction of the District Judge and was, therefore, not binding on the plaintiff.

All these matters have been dilated upon before us at some considerable length. But the Court below having found that the minor was properly represented before the revenue officials through his mother who was not only his guardian *ad litem* but also the guardian of his person and property duly appointed by the District Judge and who being a *pardadar* woman was herself represented by her brother holding her general power of attorney and also special power of attorney to act for the minor in the partition proceedings, has dismissed the suit on the ground that it strikes directly at the formal proceedings of the revenue authorities and impugns the correctness of their method of partition and, therefore, a Civil Court has no jurisdiction to entertain it.

During the pendency of the appeal in this Court the appellant has attained majority and, on his application, has been allowed to conduct this appeal as one of full age. From the foregoing it will appear that the sole question before us is whether the suit is entertainable by a Civil Court. The learned counsel for the appellant has referred us to several rulings which are quite irrelevant inasmuch as they deal with disputes concerning the measure of right in land to be divided. But in this case there is no dispute as to the measure of right ; the sole dispute is as to the correctness and propriety of the partition proceedings and whether by reason of certain defects of procedure in the Revenue Officer's proceedings and deficiency of conduct on the part of the minor's representative the partition should be held to be inoperative as against the plaintiff. *Dasondi v. Buta* (1) and *Gulab Singh v. Mst. Sukhan* (2) are the only two rulings quoted which appear to us to have a bearing on the subject under discussion. In *Dasondi v. Buta* (1) it was held that reversioners who claimed a declaration that a partition effected by a widow with a mere life-estate should not be binding upon them was a matter for decision by a Civil Court. The *ratio decidendi* in that case clearly was that the action did not impugn the partition so far as the parties to it were concerned and the relief claimed could be granted without affecting the partition which had actually taken place. In *Gulab Singh v. Mst. Sukhan* (2) the facts of which were practically similar to those of *Dasondi v. Buta* (1) it was

(1) 74 P. R. 1913

(2) 104 P.R. 1900.

held that the presence or absence of fraud did not affect the jurisdiction and the Civil Courts had no jurisdiction to entertain the suit.

Now S. 158 (2) (xvii) of the Land Revenue Act excludes from the jurisdiction of the Civil Courts any question arising out of proceedings for partition, provided such a question is not a question of title in any of the property covered by the application for partition; and S. 158 (1) prohibits a Civil Court from taking cognizance of the manner in which a Revenue Officer exercises any power vested in him under the Revenue Act. It is true the Revenue Officer did not specifically refer to the trees in his method of partition nor did he carry out the partition in the manner prescribed by himself in his order, for instead of effecting the partition by the drawing of lots he permitted the minor's representative to select one of the two portions drawn upon the spot; nor did he expressly give sanction as provided for in Order 32, rule 7, to the agreement between the minor's representative and Amir Haidar to take shares by selection instead of by drawing of lots; nor was that agreement sanctioned by the District Judge under S. 29 of the Guardian and Wards Act, but these defects, in our opinion, do not give the Civil Courts jurisdiction in face of the clear prohibition set forth in S. 158 of the Land Revenue Act. At the time of the partition there was no dispute as to title in the land to be partitioned and the plaintiff's grievances arise solely out of the manner in which the land was actually allotted. Those grievances he is at liberty to urge either by way of review or by way of appeal before the proper Revenue Officer but not before a Civil Court.

For these reasons we dismiss the appeal with costs leaving the appellant to pursue his remedy on the revenue side.

Appeal dismissed.

LAHORE HIGH COURT.

Appellate.

Civil.

No. 3067 of 1915. (Decided on 29-10-1919).

Scott-Smith and Le Rossignol, JJ.

GELA RAM and others

Defendants-Appellants

Versus

GANGA RAM and others

Respondents.

Punjab Land Revenue Act, S. 117 (2) (b)—decree-sheet specifying costs and not containing the particulars specified in O. 20, r. 6, C.P.C.—No valid decree and no appeal lies.

Where the decree-sheet specifies the amount of costs incurred by each party but does not contain the particulars, specified in O. 20, r. 6 C.P.C.

Held that S. 117 (2) (b) of the Punjab Land Revenue Act lays down that the Revenue Officer shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein and that there is no decree within the meaning of the portions of Civil Procedure Code and that no appeal lies — 19 Cal. 463 followed.

Appellants :—by Mr. Moti Sagar.

Respondents :—by Mr. Sheo Narain.

First appeal from the decree of Munsif, 1st Class, Jhang.

JUDGMENT.

Scott-Smith, J.—This is a first appeal from the order of a Revenue Officer who tried the suit under the procedure laid down in S. 117 (2) (b) of the Punjab Land Revenue Act, XVII of 1887, which lays down that the procedure of the Revenue Officer shall be that applicable to the trial of an original suit by a Civil Court, and that he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein.

Pandit Sheo Narain on behalf of the plaintiffs-respondents raises a preliminary objection that no decree has been drawn up by the lower Court in the form and manner prescribed by the Code of Civil Procedure. On the record there is a decree-sheet signed by the Court in which the amount of costs incurred by each party is specified, but otherwise the form has been left blank and does not contain the particulars specified in Order 20, rule 6, Civil Procedure Code.

Mr. Moti Sagar on behalf of the appellants urges that the concluding paragraph of the judgment is a decree and appealable as such. It is, however, quite clear from the Code of Civil Procedure that in the case of a civil suit it is contemplated that the judgment and decree should be quite distinct. S. 33 of the Code lays down that the Court, after a case has been heard, shall pronounce judgment and on such judgment the decree shall follow. Order 20, rules 1 to 5, Civil Procedure Code, deal with judgments in original civil suits and rule 6 gives the particulars which are to be entered in the decree. Specified forms are prescribed for decrees in different classes of suits by Appendix D of the first schedule to the Code. It is, therefore, quite clear that in the case of an original civil suit the decree must be quite distinct from the judgment. Order XLI, rule 1 of the Code, lays down that a memorandum of appeal shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on

which it is founded. Again S. 117 (2) (b) of the Punjab Land Revenue Act lays down that the Revenue Officer shall record a judgment and decree containing the particulars required by the Code of Civil Procedure to be specified therein. In *Dulhin Golab Koer v. Radha Dulari Koer* (1) *Pigot, J.* said: "I must add that had the point been raised, I should have felt a difficulty in holding that a paragraph in the judgment, not drawn up in the form of a decree, and not embodied in a separate form is within the terms of the Code of Civil Procedure, a decree at all."

We agree with this view and have no hesitation in holding that there is no decree in the present case within the meaning of the portions of the Civil Procedure Code above referred to, and therefore no appeal lies.

We, therefore, dismiss the appeal, but as we consider that the plaintiffs were to blame for not moving the Court to draw up a formal decree, we leave the parties to bear their own costs in this Court. Pandit Sheo Narain says that he will advise his clients to move the lower Court now to draw up a proper decree.

Appeal dismissed.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings.

1920.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

Revenue

No. 5 of 1919-20. (Decided on 29-3-1920).

Fagan, F. C.

SURJAN SINGH

Applicant

Versus

BASANT SINGH and others

Respondent.

Punjab Alienation of Land Act, S. 16—Temporary alienation of the land of an agriculturist judgment debtor in execution of a simple money-decree—C. P. Code, S. 72.

Held, that a Civil Court could order the temporary alienation of the land of an agriculturist judgment-debtor in the execution of a decree. The Collector was therefore bound to obey the orders of the Civil Court in the matter. 1 P.R. 1919 Rev. relied, 8 P.R. 1917 (Rev.) Overruled

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

The Deputy Commissioner and the Commissioner have disposed of the present case in accordance with the view of the law taken in *Ahmad Khan v. Parmanand* (1).

That view was, however, subsequently dissented from in *Saleh Mohammad v. Mehar Singh* (2) and should now be regarded by all Revenue Officers as overruled.

I accordingly set aside the order of the Commissioner under revision and return the case to him for fresh decision.

Revision accepted.

1) 8 P. R. 1917 (Rev.) : 1917 P. L. C. 10 (Rev.) : 43 I. C. 356
(2) 1919 P.L.C. 10 (Rev.) : 1 P.R. 1919 (Rev.) : 51 I. C. 399.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

No. 11 of 1919-20 (Decided on 5-5-1920)

Revenue.

Maynard, F. C.

MR. THEOPHILUS

*Appellant**Versus*

CROWN

Respondent.

**Promotion to higher grade of superintendent—order regulating—
language not to receive technical or strained interpretation—princi-
ples governing good service allowances in para. 18 of Standing Order
44—application to new system of grade promotions.**

It is not intended that the language of the order which regulates promotion to the higher grade of superintendent should receive a technical or strained interpretation. The principles governing the good service allowances indicated in paragraph 18 of Standing Order 44, under which such allowances were to be given by preference to the official who had been longest in the post of head clerk, provided he had been at least 5 years in such a post and his work had been satisfactory, apply to the new system of grade promotions.

Appeal from the order of the Commissioner of Ambala Division.

ORDER.

The question is one of promotion to the higher grade of Superintendent, carrying Rs. 200 per mensem. The nature of the appointment appears from paragraph 177 of the report of the Clerical Establishment Committee. It does not affect the work to be done by the official concerned, but only the pay which he draws. But the arrangement into two grades has superseded the old arrangement under which certain good service allowances were formerly given.

The principles which governed those good service allowances are indicated in paragraph 18 of Standing Order 44. The intention evidently was that these allowances should be given by preference to the official who had been longest in the post of Head Clerk (now renamed Superintendent) provided that he had been at least 5 years in such a post and that his work had been satisfactory. The same principles are applicable to the new system of grade promotion which has superseded the old service allowances.

Applied with absolute strictness, these principles would exclude the applicant (as well as some others) from promotion to the higher grade, because he has not served in the appointment for 5 years. But I propose

to deal with the matter as one between Messrs. Tancered, Waugh, Nolda and Theophilus.

The statement on the Commissioner's file shows that the substantive service of each of these four, in the appointment now called that of Superintendent, began as follows:—

Mr. Tancered, March 1908.

Mr. Waugh, January 1916.

Mr. Theophilus, March 1917.

Mr. Nolda, March 1918.

I would not attempt to follow the petitioner into his technical arguments on the subject of Mr. Waugh's substantive appointment in the Karnal District Office. The only question on which there is room for any real difference of opinion is whether Mr. Nolda should be held to have served as Superintendent longer than Mr. Theophilus, because Mr. Nolda has acted (*i. e.*, I understand, officiated) in other divisions.

Having regard to the facts that Mr. Nolda began to act as Head Clerk of a District office (Multan) as early as 1911, and that he continued to act in similar positions in Civil and Public Works Department offices, up to the time of his permanent substantive appointment as Head Clerk at Simla, I hold that the Commissioner's decision on this subject was a reasonable and equitable one. It is not intended that the language of the orders which regulate promotions of this kind should receive a technical or strained interpretation; and, as has already been pointed out, Mr. Theophilus would not be entitled to the promotion if the strict rule requiring 5 years' service as Head Clerk or Superintendent were applied to his case.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER, OF THE
PUNJAB.

Revision Side.

Revenue.

No. 47 of 1918-19. (Decided on 29-8-1919).

Maynard, F. C.

JIWAN and others

Applicants.

Versus

MOHAMMAD HAYAT

Defendant.

(i) Punjab Land Revenue Act, S. 44—Entry in Revenue records—
presumption.

Entry in the revenue papers as to the facts stated by the tenant and admitted to be correct by the landlord, though not an agreement, is valuable piece of evidence and a presumption of truth arises in respect to those facts. But a presumption that a fact is correct is an entirely different thing from a presumption that an inference is justified.

(ii) Punjab Tenancy Act, S. 112—entry in a record of rights—whether amounts to an agreement (328 of 1868 Act.—S. 2)

A mere entry in the record of rights does not necessarily amount to an agreement, and in particular a mere voluntary admission by a tenant, even though recorded in the record of rights, will not operate to deprive him of his rights. Entries other than those specified in the second part of S. 2 of Tenancy Act, 1868 and in S. 112 of the Tenancy Act of 1897 may or may not be agreements according to their tenure and to circumstances under which they were regarded, 18 P. R. 1882; 24 P. R. 1883 referred to, 10 P. R. 1901 Rev. followed.

Held, also, that the entry in question did not amount to an agreement binding on the parties, and the tenant was an occupancy tenant under S. 5 (1) (c).

Revision from the order of the Commissioner, Julundur.

ORDER.

I have heard Counsel for the parties. The so-called *parcha tasdiq*, which forms a part of the record of rights of the settlement of 1882, contains a passage, which I translate as follows:—

Jiwan, tenant, on behalf of himself and his minor brothers made to-day the following statement:—My father came and settled in this village in the Sambat year 1902 (A.D. 1845), broke up the waste of Khasra No. 131 in that year and cultivated it thereafter. We have been in possession since his death and are entered as occupancy tenants in the former record. We broke up Khasra No. 156 in Sambat 1920-21 (A.D. 1863-64). We are tenants-at-will in respect to this and (here the record changes from the first person to the third) it was stated that the rent was rent in kind as in *khata* No. 3.

"Accordingly the owner, Jalai Din, admitted the statement of the tenants. Since the father of tenants cultivated the occupancy land at the time that he settled in the village, they must be recorded as occupancy tenants in respect of it, in accordance with S. 5 (3) of Act XXVIII of 1868. And the land which is non-occupancy land will continue to be recorded as non-occupancy."

The first point to be noticed about this record is that it indicates an apparent misunderstanding of the law contained in S. 5 (3) of Act XXVIII of 1868, on the part of the officer who passed the order and recorded the proceedings. He appears to have thought that the law drew a distinction between land cultivated at the time of the tenant's first settlement in the village, and land cultivated by him thereafter. But the clause provides that a tenant who is at the date of the passing of the Act the representative of a person who settled as a cultivator in the village in which the land occupied by such tenant is situate, along with the founders,

of the village is to be deemed to have a right of occupancy in the land so occupied, whether the land was occupied from the time of first settlement or from a later date.

The reference in the record to the rate of rent throws no light upon the question: because the rate of rent shown in *khatra* No. 3 is the all-round rate of the village for all tenants, occupancy and non-occupancy alike (one-fifth of produce together with $2\frac{1}{4}$ seers per maund for expenses.)

On the facts that were stated by the tenant and admitted by the landlord, the former was entitled to occupancy rights in the whole of the land in question. The only question in regard to which doubt arises is whether the tenant's statement that he is not a non-occupancy tenant in a portion of that land constitutes an agreement waiving the occupancy status. It has been strongly urged before me that the mere fact that the statement is recorded in the Record of Rights makes it an agreement. But that is certainly not so. Both under S. 2 of Act XXVIII of 1868, and under S. 112 of Act XVI of 1887, certain entries are to be deemed to be agreements. If all entries were to be deemed to be agreements, merely because they are recorded in a Record of Rights, there would be no necessity for a provision of the law expressly declaring that some of them are to be deemed agreements. It is an inevitable inference that entries, other than entries specified in the second part of S. 2 of Act XXVIII of 1868, and in S. 112 of Act XVI of 1887, may or may not be agreements under which they were recorded.

It is a very significant fact that each of the two clauses which I have just cited, while providing that entries made before a certain date in respect of certain matters shall be deemed to be agreements, establishes this rule in respect of those matters specified and not in respect of other under the Tenancy Act. Chapter II of Act XXVIII of 1868 is excluded from the rules laid down in the second clause of S. 2: and similarly there is no provision in S. 112 of Act XVI of 1887 in respect to entries determining the status of a tenant as an occupancy tenant or a tenant-at-will. It seems plain that the legislature had a deliberate intention of placing upon a special footing entries purporting to determine occupancy or non-occupancy status, and of declining to make the assumption that such entries were agreements unless their character as agreements was otherwise established.

One of the rulings which has been cited, in order to show that the entry in this case is an agreement, is *Ghazi v. Juma Khan* (1). In that case landlord and tenant concurred in saying that the land had been given 20 years previously to the tenant in a cultivated state, that the tenant had effected no improvements, that the landlord could not evict the tenant at pleasure, and that the tenant agreed to pay a stated cash

(1) 18 P. R. 1862.

(ii) Punjab Tenancy Act, S. 112—entry in a record of rights—whether amounts to an agreement (328 of 1868 Act.—S. 2)

A mere entry in the record of rights does not necessarily amount to an agreement, and in particular a mere voluntary admission by a tenant, even though recorded in the record of rights, will not operate to deprive him of his rights. Entries other than those specified in the second part of S. 2 of Tenancy Act, 1868 and in S. 112 of the Tenancy Act of 1887 may or may not be agreements according to their tenure and to circumstances under which they were regarded, 18 P. R. 1882; 24 P. R. 1883 referred to. 10 P. R. 1901 Rev. followed.

Held, also, that the entry in question did not amount to an agreement binding on the parties, and the tenant was an occupancy tenant under S. 5 (1) (c).

Revision from the order of the Commissioner, Julundur.

ORDER.

I have heard Counsel for the parties. The so-called *parcha tasdiq*, which forms a part of the record of rights of the settlement of 1882, contains a passage, which I translate as follows:—

Jiwan, tenant, on behalf of himself and his minor brothers made to-day the following statement:—My father came and settled in this village in the Sambat year 1902 (A.D. 1845), broke up the waste of Khasra No. 131 in that year and cultivated it thereafter. We have been in possession since his death and are entered as occupancy tenants in the former record. We broke up Khasra No. 156 in Sambat 1920-21 (A.D. 1863-64). We are tenants-at-will in respect to this and (here the record changes from the first person to the third) it was stated that the rent was rent in kind as in *khata* No. 3.

"Accordingly the owner, Jalai Din, admitted the statement of the tenants. Since the father of tenants cultivated the occupancy land at the time that he settled in the village, they must be recorded as occupancy tenants in respect of it, in accordance with S. 5 (3) of Act XXVIII of 1868. And the land which is non-occupancy land will continue to be recorded as non-occupancy."

The first point to be noticed about this record is that it indicates an apparent misunderstanding of the law contained in S. 5 (3) of Act XXVIII of 1868, on the part of the officer who passed the order and recorded the proceedings. He appears to have thought that the law drew a distinction between land cultivated at the time of the tenant's first settlement in the village, and land cultivated by him thereafter. But the clause provides that a tenant who is at the date of the passing of the Act the representative of a person who settled as a cultivator in the village in which the land occupied by such tenant is situate, along with the founders

of the village is to be deemed to have a right of occupancy in the land so occupied, whether the land was occupied from the time of first settlement or from a later date.

The reference in the record to the rate of rent throws no light upon the question: because the rate of rent shown in *khatra* No. 3 is the all-round rate of the village for all tenants, occupancy and non-occupancy alike (one fifth of produce together with $2\frac{1}{4}$ seers per maund for expenses.)

On the facts that were stated by the tenant and admitted by the landlord, the former was entitled to occupancy rights in the whole of the land in question. The only question in regard to which doubt arises is whether the tenant's statement that he is not a non-occupancy tenant in a portion of that land constitutes an agreement waiving the occupancy status. It has been strongly urged before me that the mere fact that the statement is recorded in the Record of Rights makes it an agreement. But that is certainly not so. Both under S. 2 of Act XXVIII of 1868, and under S. 112 of Act XVI of 1887, certain entries are to be deemed to be agreements. If all entries were to be deemed to be agreements, merely because they are recorded in a Record of Rights, there would be no necessity for a provision of the law expressly declaring that some of them are to be deemed agreements. It is an inevitable inference that entries, other than entries specified in the second part of S. 2 of Act XXVIII of 1868, and in S. 112 of Act XVI of 1887, may or may not be agreements under which they were recorded.

It is a very significant fact that each of the two clauses which I have just cited, while providing that entries made before a certain date in respect of certain matters shall be deemed to be agreements, establishes this rule in respect of those matters specified and not in respect of other under the Tenancy Act. Chapter II of Act XXVIII of 1868 is excluded from the rules laid down in the second clause of S. 2: and similarly there is no provision in S. 112 of Act XVI of 1887 in respect to entries determining the status of a tenant as an occupancy tenant or a tenant-at-will. It seems plain that the legislature had a deliberate intention of placing upon a special footing entries purporting to determine occupancy or non-occupancy status, and of declining to make the assumption that such entries were agreements unless their character as agreements was otherwise established.

One of the rulings which has been cited, in order to show that the entry in this case is an agreement, is *Ghazi v. Juma Khan* (1). In that case landlord and tenant concurred in saying that the land had been given 20 years previously to the tenant in a cultivated state, that the tenant had effected no improvements, that the landlord could not evict the tenant at pleasure, and that the tenant agreed to pay a stated cash

(1) 18 P. R. 1862.

[*malikana* to the landlord in addition to the revenue. Here obviously was an agreement made by way of compromise but it was an agreement not in virtue of a general rule of law causing all entries to be viewed as agreements, but in virtue of the arrangements which it embodied and upon which the landlord and tenant had agreed to compromise their differences.

Similarly, the findings in *Kadar Din v. Nur* (2) arrive at the conclusion that the entries in a particular case amount to an agreement under the second part of S. 2 of Act XXVIII of 1868, but they do not exclude from discussion the question whether another set of entries in a different case do or do not amount to such an agreement.

Rahim Bakhsh v. Rahim Bakhsh (3), on the other hand, definitely lays down the principle that the mere entry in the Record of Rights does not necessarily amount to an agreement; and, in particular, that a mere voluntary admission by a tenant even though recorded in the Record of Rights, will not operate to deprive him of his rights.

The question, therefore, in the present case remains, so far as previous rulings go, entirely an open one. It is whether the record which I have translated at the beginning of this order is an agreement. There is no general rule of law which determines it to be such.

I think that it is plenty not an agreement. The Officer who recorded it misunderstood the law, as has already been pointed out. Notwithstanding this fact—a fact which would tend in many cases to cause a particular statement to be put into the mouth of a deponent—it is possible that the tenant volunteered the statement that he was a tenant-at-will in certain land. But in doing so he was merely expressing his view of the law. He had already stated facts which, on a correct interpretation of the law, showed him to be entitled to occupancy rights, and the fact that he (like the presiding officer) misunderstood the legal position does not amount to an agreement to waive his rights.

The entry, though not an agreement, is in respect to the facts stated by the tenant and admitted to be correct by the landlord, a valuable piece of evidence, and a presumption of truth arises in respect to those facts. It has been urged before me that this presumption of truth applies to the tenant's inferences from the facts, and, therefore, to his statement that he is merely a tenant-at-will. But of course a presumption that a fact is correct is an entirely different thing from a presumption that an inference is justified.

(2) 24 P.R. 1883.

(3) 10 P.R. 1901 Rev

The conditions of S. 5 (1) (c) of Act XVI of 1887 are satisfied in respect to the land in issue in the present application. I accept the applications, and cancel the notice of ejectment on the ground that the applicant is a tenant under S. 5 (1) (c). This order applies to present field numbers 816 min. 817, 818, 819, 820 ; making 23 bighas, 12 biswas in all.

Revision accepted.

—
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 10 of 1918-19. (Decided on 5-11-1919).

Fagan, F. C.

BAGA SINGH ..

...
Versus

... *Applicant*

SHAHAB DIN AND ANOTHER ...

... *Respondents.*

Punjab Alienation of Land Act, Ss 6 (1) and 7 (3)—Redemption of usufructuary mortgage during its currency under S. 7 (3)—computation of amount in case of produce rent—interest—current interest at a reasonable rate on successive balance of the principal outstanding from time to time to be included.

A mortgage in form 6 (1) was executed. The mortgagee was to receive the rent and the profits of the land, that is, in the case of a kind rent, the rent share of the produce "in lieu of interest and towards payments of the principal." The mortgagor applied under S. 7 (3) for redemption. Held, that current interest on the successive balance of the principal sum should be charged against the value of the produce received by the mortgagee during the term of his possession, as S. 7 (1) merely lays down that there can under no circumstances be any value of interest under the mortgage outstanding after the expiry of the stipulated term of the mortgage. In cases under S. 7 (3) of the Alienation of Land Act, in which a Deputy Commissioner is required to decide whether the debt on a mortgage under S. 6 (1) (a) of the Act has been, liquidated, he should include in that debt current interest at a reasonable rate on the balance of the principal outstanding from time to time at the successive harvests during which the mortgagee has been in possession under such mortgage.

Revision from the order of Commissioner of Multan Division.

ORDER

In this case the respondent mortgaged to the applicant for revision 111 *kanals* 5 *marlas* of land (the greater portion of it canal-irrigated) for Rs. 1,500 from Kharif 1912 for a period of 10 years. The mortgage was in the form permitted by S. 6 (1) (a) of the Alienation of Land Act under which the mortgagee is to receive the rents and profits of the land, that is, in the case of a kind rent the rent share of the produce, "*in lieu of interest and towards payment of the principal.*"

The respondent applied under S. 7 (3) of the Act for redemption, alleging that the mortgage debt less Rs. 450 had been discharged from the rents and profits already received and offering to pay the balance of Rs. 450. No local enquiry seems to have been made as to the profits actually obtained by the mortgagee. The Revenue Assistant roughly estimated in case what he considered those profits must or should have been. He came to the conclusion that in the 7 years they had amounted to Rs. 1,600 up to and inclusive of Rabi 1919. The Deputy Commissioner accepted the estimate and directed redemption as from and inclusive of Kharif 1919 without any further cash payment.

With reference to these proceedings, I am not satisfied that there has been proper and adequate enquiry as to the mortgagee's receipts under the mortgage since and inclusive of Kharif 1912. He apparently takes rent in kind so that an exact account of such receipts is not practicable. They can only be estimated but it is desirable that the estimate should be closer than that made by the Revenue Assistant.

Moreover, it appears to have been forgotten that current interest on the successive balances of the principal sum should be charged against the value of the produce received by the mortgagee during the term of his possession as mortgagee. That value is intended to cover not merely the principal sum but the principal sum plus current interest,—*vide* S. 6 (1) (a) of the Alienation of Land Act. As explained in *Sultan v. Lakh Ram* (1) the prohibition in S. 7 (1) of the Act against the accrual of interest is in no way inconsistent with the above remark. S. 7 (1) merely lays down that there can under no circumstances be any balance interest under the mortgage outstanding after the expiry of the stipulated term of the latter.

In cases under S. 7 (3) of the Alienation of Land Act in which a Deputy Commissioner is required to decide whether the debt on a mortgage under S. 6 (1) (a) of the Act has been liquidated, he should include in that debt current interest at a reasonable rate on the balance of the principal outstanding from time to time at the successive harvests during which the mortgagee has been in possession under such mortgage.

In this case the mortgagor admitted before me that interest should be adjusted on the above principal, and also that in his original application for redemption he offered to pay Rs. 450 as balance of mortgage debt still due.

For the above reasons, I am compelled to accept the application and to direct that the case be disposed of *de novo* by the Collector after further enquiry.

The respondent will pay applicant's costs in this Court.

Revision accepted.

MST. TOTI v. MALUKA
LAHORE HIGH COURT.

9

Appellate.

Civil.

No. 1689 of 1916, (Decided on 25-11-1920).

Shadi Lal, C.J. and Leslie-Jones, J.

MST. TOTI and another

Appellants

Versus

MALUKA

Respondent.

Punjab Tenancy Act, S. 59 (1) (c)—Occupancy-tenancy—succession to—custom.

Held, that succession to an occupancy tenancy is governed not by customary law but by the provisions of S. 59 of the Tenancy Act and that unless the reversioner can prove that the land was occupied by the common ancestor, he has no locus standi to contest an alienation by the widow, of an occupancy tenancy, and so far as he is concerned, the consent or otherwise of the landlord is immaterial.

Second Appeal from the decree of the District Judge, Gurdaspur.

Appellants :—by Mr. Badri Nath Kapur.

Respondent :—by Mr. Tek Chand.

JUDGMENT.

Leslie-Jones, J.—Mst. Toti who inherited an occupancy tenancy from her husband Kirpa, gifted the property to her illegitimate son, Amar Singh, who obtained a mutation. The present suit was instituted by one Maluka who alleged that he was a collateral of Kirpa, descended from a common ancestor who occupied the land and, therefore, claimed a declaration that the alienation by Mst. Toti should not affect his reversionary rights after her death.

The first Court dismissed the suit on the ground that the plaintiff had failed to prove that the property in suit was occupied by the common ancestor of himself and Kirpa.

The plaintiff appealed to the District Judge who held that the plaintiff was a collateral of Kirpa and without coming to any finding on the question whether the land was occupied by the common ancestor—a point, which in his opinion, did not arise—decreed the claim on the ground that Mst. Toti having only a limited estate could not alienate except for necessity unless she obtained the consent of all the landlords.

Mst. Toti and her son have now preferred a second appeal to this Court. The District Judge apparently failed to understand that succession to an occupancy tenancy is governed not by Customary Law but by the provisions of S. 59 of the Tenancy Act, and that unless the plaintiff can prove that the land was occupied by the common ancestor, he has no *locus standi* to contest an alienation by the widow, of an occupancy tenancy, because he is not her heir and is in no better position than any stranger,

even though he may be a collateral of her deceased husband. So far as he is concerned, the consent or otherwise of the landlords is immaterial.

We allow the appeal, and as the District Judge has come to no finding on the question whether the common ancestor occupied the land, remand the case under O. 41, rule, 23, C.P.C. to the District Judge for disposal according to law. Costs will be costs in the cause.

Case remanded.

LAHORE HIGH COURT.

Appellate

Civil.

No. 48 of 1919. (Decided on 2-8-1920).

Shadi Lal and Martineau, JJ.

SADDA SINGH and otherss *Defendants-Appellants*
Versus

KIRPALA and other *Plaintiffs-Respondents.*

(i) Punjab Land Revenue Act, S. 117 (2) (c)—Act passed in 1914 substituted 'Subordinate Judge' for District Judge—Assistant Collector acting in a matter regarding title acts as a Subordinate Judge—appeal lies to District Judge.

Held, under the Revenue Act as it existed prior to 1914, the Revenue Officer was deemed to be a District Judge for the purpose of determining the forum which was competent to hear an appeal from a decree passed by him in dispute regarding title. But the Punjab Courts Act passed in 1914 substituted the phrase 'Subordinate Judge' for District Judge in S. 117 (2) (c) of the Land Revenue Act and there could therefore be no doubt that the Assistant Collector in the matter of the determination of the question of title was acting as Subordinate Judge and an appeal lay to the District Court from the decision of the such Revenue officer.

(ii) Appeal—Amendment in law not brought to the notice of Single judge—Division Bench hearing an appeal under Letters Patent may not uphold judgment which is wrong.

Where an amendment in law is not brought to the notice of the Single Judge hearing the appeal, the Division Bench hearing an appeal under the Letters Patent may not uphold the judgment of the Single Judge, specially when the matter is patent and the judgment is wrong.

Appeal from the decree of Sir Henry Rattigan, C. J.

Appellants :—By N. C Pandit.

Respondents :—By Sheo Narain.

JUDGMENT

Shadi Lal, J.—Upon a question as to title having been raised before him, the Revenue Officer proceeded under S. 117 of the Punjab Land Revenue Act to determine the question as though he were a Civil Court. Now, it is true that under the Land Revenue Act, as it existed prior to 1914, the Revenue Officer was deemed to be a District Judge for the

purpose of determining the forum which was competent to hear an appeal from a decree passed by him in regard to a dispute of this character. But the Punjab Courts Act passed in 1914 substituted the phrase "Subordinate Judge" for "District Judge" in S. 117 (2) (c) of the Land Revenue Act, and there can, therefore, be no doubt that the Assistant Collector in the matter of determination of the question of title was acting as Subordinate Judge of the and that the appellant was justified in filing his appeal in the Court of the District Judge. The order of the District Judge returning the appeal for presentation to this Court and that of the learned Judge of this Court dismissing the appeal as barred by time proceed upon an assumption that the law as originally declared in S. 117 (2) (c) has not been subsequently amended ; and they must be set aside.

Mr. Sheo Narain for the respondents frankly admits that the appeal in view of the amendment mentioned above was rightly presented to the District Judge, but the learned Advocate contends that this amendment was not brought to the notice of either the District Judge or the Judge in Chambers, who dealt with the matter, and that the Division Bench, hearing an appeal under the Letters Patent, should not, therefore, interfere with the judgment of the Single Judge. Considering that the matter is patent, and that the amendment in the law was not noticed either by the Counsel or by the Court, we see no reason why we should uphold the judgment which is admittedly wrong.

We, accordingly, set aside the judgment of the learned Judge in Chambers as well as the order of the District Judge returning the appeal for presentation to this Court, and direct that the memorandum of appeal be returned to the appellant for presentation to the District Judge. The Court-fee on the memorandum of appeal shall be refunded and other costs shall be borne by the parties themselves.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

No. 8 of 1919-20 (Decided on 18-5-1920.)

Revenue.

Maynard, F.C.

ABADAN KHAN

Appellant

Versus

KAHLA SINGH

Respondent.

Sufedposh—appointment—indebtedness of candidate—disqualification.

Held, that a person whose financial position is not satisfactory should not be appointed a Sufedposh.

Appeal against the order of Commissioner, Jullunder Division.

ORDER.

The statement made in Sheikh Asghar Ali's order that Kahla Singh is in debt should be verified. File returned for this purpose.

I have heard Counsel for the parties and considered the district report on Kahla Singh's indebtedness. The enquiry which has now been made shows that Kahla Singh's financial position is not satisfactory. I therefore set aside the order appointing him and return the case for a fresh appointment to be made.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 328 of 1919-20. (Decided on 6-12-20)

Maynard, F. C.

DIAL SINGH *Applicant*

Versus

INDAR SINGH *Other side.*

**Lambardari—appointment—hereditary claim—want of assistance
in the War.**

Held, that even when a Lambardar is punished by dismissal for failure to assist in recruiting, the family is not to be excluded for this reason from the right to succeed to the Lambardari and the fact that a man, not at the time having an official position as Lambardar, failed to help is not a reason for excluding him when the succession opens.

Revision against the order of Commissioner, Jullundur Division.

ORDER.

I have heard Pleaders for the parties. Dial Singh is the hereditarily entitled claimant, being related to Chughatta, the late Lambardar, through Chughatta's grandfather Sardool Singh, and being a member of the eldest branch of Sardool Singh's descendants. The respondent is not a descendant of Sardool Singh, but of Sardool Singh's brother.

The only reason for not appointing the hereditary claimant is that neither Chughatta nor he gave proper assistance during the War, presumably in the matter of recruiting. It has been held by this Court that even when a Lambardar is punished by dismissal for failure to assist in recruiting, the family is not to be excluded for this reason from the right to succeed to the *lambardari* and the fact that a man, not at the time having an official position as Lambardar, failed to help, is not a reason for excluding him when the succession opens up.

Accepting the application I appoint Dial Singh to be lambardar. At the same time I note that he will render himself liable to dismissal if he does not reside in the village of which he is Lambardar. No order as to costs.

IN THE COURT OF FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue.

No. 9 of 1919-20. (Decided on 7-8-20.)

Maynard, F. C.

RATTAN CHAND *Applicant*
Versus

MANAK CHAND and others *Other Side.*

Punjab Land Revenue Act, S. 37—mutation to accord with existing conditions.

The Civil Court decree ordered delivery of possession to R. & M. jointly. The mutation was effected accordingly. Subsequently the mortgagor redeemed the mortgage from M. Held, that the entry in the Revenue Records should show that the rights of R. under the order of the Civil Court were unaffected by the redemption from M.

Revision against the order of Assistant Settlement Officer, Lahore.

ORDER.

The parties are before me and I have heard the arguments of Manak Chand. The order of the Civil Court, as noted in my order upon Revision No. 7 of 1918-19, was for the delivery of possession to Ratan Chand and Manak Chand. In order that effect may be given to the intentions of the Civil Courts, decree, I order mutation in favour of Rattan Chand and Manak Chand jointly, accepting this application and giving costs in favour of Rattan Chand

ORDER.

I have heard the parties in this case, in which the mortgagors apply for review of the order which was passed as between the mortgagees. It now appears that on September 30th, 1918, mutation No. 483 was sanctioned by which the land was shown to have been redeemed from mortgagee up to that time, owing to the error of the Revenue Officers in mutating possession in favour of one mortgagee only, the land was shown as mortgaged only to Manak Chand.

It is necessary now to give effect to the mutation by which the land was redeemed from Manak Chand while maintaining such rights as Rattan Chand has under the decree of the Civil Court, ordering delivery of possession to Rattan Chand and Manak Chand jointly. This can best be done by entering in the remarks column of the *Jamabandi* a note to the effect that, on the basis of the order of the Civil Court, the Financial Commissioner had ordered mutation in favour of Rattan Chand and Manak Chand jointly, but that, attention having been drawn by the mortgagors to the fact that they had already redeemed the mortgage from Manak Chand, and that a mutation giving effect to this redemption had already been ordered the Financial Commissioner reviewed this order and directed that the entry should show that the rights of Rattan Chand, under the order of the Civil Court, were unaffected by the redemption from Manak Chand.

14 PUNJAB CASE-LAW, PART C. [1920.]
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 164 of 1919-20. (Decided on 4-6-1920.)

Revenue.

Maynard, F. C.

CH. KEHRI SINGH

Applicant

Versus

CROWN

Other side.

Sufedposh—dismissal—failure to attend on a Deputy Commissioner's visiting day—no ground for.

Held, that neither the failure to come on a Deputy Commissioner's visiting day nor his attempts at excusing himself by a conventional pretence are good grounds for the dismissal of a sufedposh. The dismissal must be justified on substantial grounds of neglect of duty.

Revision against the order of the Commissioner, Ambala Division.

ORDER. (2-5-1920.)

In this case a notice was issued by the Deputy Commissioner to certain Zaildars and Sufedposhes directing them to come to see him on any Monday or Saturday up to the end of July on the alternative days,

July 18.....	Saturday
July 21.	Monday
July 26.....	Saturday
July 28.....	Monday

Kehri Singh arrived on the 30th (Wednesday). When taken to task for not presenting himself on one of the days prescribed he shuffled and said he had missed the train: but neither his failure to come on the Deputy Commissioner's visiting day, nor his attempts at excusing himself by a conventional pretence, are good grounds for the dismissal of a sufedposh.

If dismissal is to be justified, it must be justified on substantial grounds of neglect of duty.

It is not plain to me whether the Commissioner considers Kehri Singh's neglect of duty (apart from the late arrival and the pretence of missing the train) so serious as to justify dismissal, and I return the case to him for explanation on this point.

ORDER. (4-6-1920.)

The Commissioner reporting on the above order, lays stress upon the negligence of the applicant, subsequent to the date of the rewards which were conferred upon him for his valuable services at an earlier stage. Like many persons, the applicant appears to have thought that, having done a piece of good work—and been rewarded for it, he was entitled to sit down and draw his allowances for nothing thereafter.

The proper way to deal with a person who makes this particular mistake is to bring home to him the fact that he must work if he wishes to keep his place.

I accept the appeal to this extent, that, in consideration of the good services of the applicant at an earlier stage, I restore him to the position of Sufedpush on probation for two years, and with the loss of one year's emoluments. At the end of the period of probation he will be removed if his work is not completely satisfactory.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

No. 142 of 1919-20. (Decided on 6-8-1920).

Revenue.

Maynard, F. C.

RAM Das and anothers

Applicants

Versus

UDMI

Other side.

(i) Punjab Tenancy Act, Ss. 99 and 84 (3)—no doubts about jurisdiction—reference to High Court unjustified.

Held, that where there was no doubt that a case was cognizable by a Revenue Court, reference of the question to the High Court was unnecessary.

(ii) Punjab Tenancy Act, S. 14 and Punjab Land Revenue Act, S. 141—tenants in cultivating possession—delivery of possession by beat of drum suffices to establish the relation of landlord and tenant.

Where a decree-holder was given possession of land by the beat of drum and proclamation, the tenants being in cultivating possession at the time, held, that there was sufficient compliance with the provisions of law so as to enable the decree-holder, landlord to bring a suit for damages in lieu of rent of land.

Case forwarded by the Commissioner of Ambala Division.

ORDER.

I have heard the appellant and the counsel for the respondent. I have no doubt at all that the case is cognizable by a Revenue Court, and it is unnecessary to refer this question to the High Court.

In the order of the Tahsildar of Sonapat, dated 6-5-1918, which dealt with the claim of the present applicant in respect to the *kharif* of 1917, it is clearly stated that, although physical possession was not delivered to the present applicant, landlord's possession was given to him in the usual way by beat of drum. Now this delivery of possession was quite sufficient for the purposes of this case, and it apparently gave to the present applicant that position, and that relation towards the tenants in cultivating possession, which were essential to his success in the present litigation. Though it is too late now to upset the findings of the Revenue Courts in respect to the produce of the *kharif* of 1917, those Courts must not in dealing with the produce of *Rabi* of 1918 (or with the produce of later harvests, if there should be subsequent litigation regarding those harvests), fall again to the same error.

14 PUNJAB CASE-LAW, PART C. [1920.]
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 164 of 1919-20. (Decided on 4-6-1920.)

Revenue.

CH. KEHRI SINGH

Maynard, F. C.

Applicant

Versus

CROWN

Other side.

Sufedposh—dismissal—failure to attend on a Deputy Commissioner's visiting day—no ground for.

Held, that neither the failure to come on a Deputy Commissioner's visiting day nor his attempts at excusing himself by a conventional pretence are good grounds for the dismissal of a sufedposh. The dismissal must be justified on substantial grounds of neglect of duty.

Revision against the order of the Commissioner, Ambala Division.

ORDER. (2-5-1920.)

In this case a notice was issued by the Deputy Commissioner to certain Zaildars and Sufedposhes directing them to come to see him on any Monday or Saturday up to the end of July on the alternative days,

July 18.....	Saturday
July 21.	Monday
July 26.....	Saturday
July 28.....	Monday

Kehri Singh arrived on the 30th (Wednesday). When taken to task for not presenting himself on one of the days prescribed he shuffled and said he had missed the train: but neither his failure to come on the Deputy Commissioner's visiting day, nor his attempts at excusing himself by a conventional pretence, are good grounds for the dismissal of a sufedposh.

If dismissal is to be justified, it must be justified on substantial grounds of neglect of duty.

It is not plain to me whether the Commissioner considers Kehri Singh's neglect of duty (apart from the late arrival and the pretence of missing the train) so serious as to justify dismissal, and I return the case to him for explanation on this point.

ORDER. (4-6-1920.)

The Commissioner reporting on the above order, lays stress upon the negligence of the applicant, subsequent to the date of the rewards which were conferred upon him for his valuable services at an earlier stage. Like many persons, the applicant appears to have thought that, having done a piece of good work—and been rewarded for it, he was entitled to sit down and draw his allowances for nothing thereafter.

The proper way to deal with a person who makes this particular mistake is to bring home to him the fact that he must work if he wishes to keep his place.

I accept the appeal to this extent, that, in consideration of the good services of the applicant at an earlier stage, I restore him to the position of Sufedpush on probation for two years, and with the loss of one year's emoluments. At the end of the period of probation he will be removed if his work is not completely satisfactory.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

Nc. 142 of 1919-20. (Decided on 6-8-1920).

Revenue.

Maynard, F. C.

RAM DAS and others

Applicants

Versus

UDMI

Other side.

(i) Punjab Tenancy Act, Ss. 99 and 84 (3)—no doubts about jurisdiction—reference to High Court unjustified.

Held, that where there was no doubt that a case was cognizable by a Revenue Court, reference of the question to the High Court was unnecessary.

(ii) Punjab Tenancy Act, S. 14 and Punjab Land Revenue Act, S. 141—tenants in cultivating possession—delivery of possession by beat of drum suffices to establish the relation of landlord and tenant.

Where a decree-holder was given possession of land by the beat of drum and proclamation, the tenants being in cultivating possession at the time, held, that there was sufficient compliance with the provisions of law so as to enable the decree-holder, landlord to bring a suit for damages in lieu of rent of land.

Case forwarded by the Commissioner of Ambala Division.

ORDER.

I have heard the appellant and the counsel for the respondent. I have no doubt at all that the case is cognizable by a Revenue Court, and it is unnecessary to refer this question to the High Court.

In the order of the Tahsildar of Sonapat, dated 6-5-1918, which dealt with the claim of the present applicant in respect to the *kharif* of 1917, it is clearly stated that, although physical possession was not delivered to the present applicant, landlord's possession was given to him in the usual way by beat of drum. Now this delivery of possession was quite sufficient for the purposes of this case, and it apparently gave to the present applicant that position, and that relation towards the tenants in cultivating possession, which were essential to his success in the present litigation. Though it is too late now to upset the findings of the Revenue Courts in respect to the produce of the *kharif* of 1917, those Courts must not in dealing with the produce of *Rabi* of 1918 (or with the produce of later harvests, if there should be subsequent litigation regarding those harvests), fall again to the same error.

Setting aside the order of Shah Rahim Bakhsh, dated 27th October 1919, in so far as it deals with the applicant's claim to a share of produce for the *Rabi* of 1918, I direct that this claim be reheard on its merits, and with due regard to the fact that possession appears to have been delivered in the usual manner, in execution of decree, by proclamation and beat of drum, I give the costs of the present proceedings in favour of the applicant.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

No. 36 of 1919-20. (Decided on 17-5-1920).

Maynard, F. C.

Revenue

JITU

Versus

Applicant

BLUROO

Other side

Lambardari—hereditary claims.

Held, that there is no justification for passing over the uncle of deceased Lambardar, where the post was an amalgamation of the deceased's hereditary post and the post of the rival candidate's adoptive father, reduced on the death of the latter.

Revision against the order of the Commissioner of Ambala Division.

ORDER. (12-1-20)

The facts appear to have been misapprehended. Rati Ram's Lambardari was an amalgamation of two posts :—

(1) The post in Thula Bhadray and Raisul, which he inherited from his father Molu.

(2) The post in Thulas Bhag Mal and miscellaneous which he obtained when a reduction was effected on the death of Udhe Ram, the respondent's adoptive father. This reduction was effected, in accordance with the intentions of the Settlement Officer, by order of the Financial Commissioner dated 18-1-1916.

Bhuru respondent, the adoptive son of Udhe Ram, lost his claim when, it was decided to reduce his father's *Lambardari* and amalgamate it with that held by Rati Ram.

There appears to have been no justification for passing over Jitu, the uncle of the deceased Rati Ram.

Before issuing notice to parties I return the case to the lower Court to ascertain whether there is anything further to be said in justification of the order passed.

ORDER (17-5-20)

It now appears that the facts are as stated in my order of 12-1-1920 and that Jitu was passed over under a misapprehension. Accepting the application, I appoint Jitu to be Lambardar: with costs in the present proceedings.

Application accepted.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1921.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 108 of 1920-21. (Decided on 30-3-1921),

Fagan, F.C.

MUHAMMAD ILAHI

Applicant

Versus

FAZL ILAHI

Respondent

**Zaildar—resignation of—cannot be made conditional on the son
being appointed in his place.**

Held, that the Land Revenue Rules do not apparently contemplate, at all events they do not expressly mention, resignation of his office by a Zaildar, but there is nothing to preclude an unconditional resignation, though a resignation conditional on the succession of a particular person designated by the resigning Zaildar is obviously opposed to the spirit of the rules regulating the succession to Zaildars.

Revision from the order of the Commissioner of Lahore Division,

ORDER.

See my order of 4th January 1921, which may be read with the present one.

The course which has been adopted by the Collector in this case is distinctly inconvenient, and is not, I think, at all what is contemplated by the Land Revenue Rules.

The resignation put in by Hayat Muhammad, though not in terms conditional on the succession of his son, the respondent, to the Zaildari to be vacated has been treated as such by the Collector and was doubtless intended by Hayat Muhammad to be so treated. When a Zaildar is too

old to perform personally the duties of his office. the usual and proper course is for a substitute to be appointed (Land Revenue Rule 27). This was the arrangement in force in this case up to the time that the present proceedings commenced and it is not clear why it was necessary to disturb them except that, as often happens in such circumstances, Hayat Muhammad wished to secure the reversion of the Zaildari for his son who had been acting as the substitute. I can see no reason why the resignation should not have been refused and the existing arrangement continued for the life of Hayat Muhammad. The Land Revenue Rules do not apparently contemplate, at all events they do not expressly mention, resignation of his office by a Zaildar, but there is nothing to preclude an unconditional resignation, though a resignation conditional on the succession of a particular person designated by the resigning Zaildar is obviously opposed to the spirit of the rules regulating the succession to Zaildars. The initiation and prosecution of needless proceedings in connection with such posts, as in this case, is to be deprecated. I direct, therefore, that the resignation of his post tendered by Hayat Muhammad, which I regard as in substance conditional, be refused and the respondent continue to act as his substitute.

Order Accordingly.

Order of 24th January 1921 referred to above is as follows :—

It is I think generally best in these cases to refuse resignation and to allow the son to continue as *Sarbrah* during the father's life-time. The resignation is often tendered in order to force the claims of the son. Moreover, it is not clear that the son in this case is yet a Lambardar.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB,

Revision Side.

Revenue.

No. 111 of 1919-20. (Decided on 19-4-1921).

Casson, F. C.

MESSRS. KALU MAL SHORI MAL

Applicants.

Versus

CROWN

Respondent.

Excess Profits Act—Assessment under—validity of.

Held, that the whole assessment under Excess Profits Act is of extremely doubtful validity in view of Government of India Letter 2017 F, dated 11. 8. 1919.

Revision from the order of Collector of Income-Tax, Amritsar.

ORDER.

It is difficult in this case to be certain of the basis of calculation, but

there are one or two considerations which have been overlooked by the Assessing Officers.

As the Rs. 50,624 is the proceeds of interest invested in the business and we know the rate of interest Rs. 5-10-0 per cent. at which this interest has been drawn, we can calculate what the capital invested amounts to. We do not know whether this capital does or does not include capital invested in the firms of which the appellant is a partner or not, but it seems quite probable that the share of income from those firms creditable to appellants' account may represent the full gross income including interest on any capital invested and in a fiscal act of this kind as there is no certainty on the point, we ought to make the assumption most favourable to assessee. His agent also on being questioned by me, and without I think in the least understanding the ultimate object of my question says that the item Rs. 50,654 is interest on capital of the firms wholly owned by appellant. He also says that the appellant has invested capital in the 3 other firms according to his share. If this is correct we must add to the total capital an estimated amount for the 3 shops, assuming that we do take them into account at all. The only excuse for doing so is that we know the Standard profits of the whole 10 shops, based on method given in S. 6 (b) of the Act. We do not know the Standard profits of the 7 shops separately and we assume that no part of any Excess profit arises from Excess profits from the 3 shops, because the income from these 3 shops is small. It is only on these assumptions that the figures of the 3 shops can be included in calculating Excess profits duty at all.

Counsel would have me adopt the capital method of assessing Standard profits as given in S. 6 (1) a and also include capital used on the 3 shops but exclude income of the 3 shops. This would be wrong. If we adopt the capital method then we must base it only on capital used in the seven shops and this capital comes to some 9 lakhs of rupees calculating on sum at Rs. 5-10-0 per cent, required to produce Rs. 50,624 but equally as we exclude capital used on the 3 shops so we must if this method is adopted exclude the income from the 3 shops.

There is another point. The income from rent is mainly if not entirely income from shops taken on mortgage with money derived from profits of the business. This in no way justifies including this rental income. I would assume that out of Rs. 3,805, Rs. 2,419 is rent on outside buildings taken on mortgage:—

To get profits of 7 shops we must exclude this leaving not assessable sum of Rs. 108,419—2,419=or 106,000.

The figures then are :—

	Rs.	A.	P.
Profit for accounting period ...	106,000	0	0
Normal profit at ten per cent.			

on capital	90,000 0 0
Excess profit	16,000 0 0
50 p. c. of this—deduct ..	8,000 5 0
Rs. 661-5-0 income-tax ..	661 0 0
	<hr/>
	7,338 7 0

Against Rs. 9,919-11-0 assessed.

The whole assessment under Excess Profits Act seems to me however to be of extremely doubtful validity in view of Government of India letter 2017 F, dated 11th August, 1919. I should have said with all respect to Mr. Watkin's opinion, that the businesses were separate :—

If this is right then tax ought to be reduced to the amount leviable as Super Tax viz, Rs. 3,242-10-6. At least the case is a doubtful one.

I accept the appeal and remitting the Excess profits duty direct that Rs. 3, 242-10-6. be levied as Super-tax.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side Revenue.
No. 123 of 1920-21. (Decided on 28-7-1921).

Fagan, F. C.

RAHMAT ULLAH and others

Applicants

Versus

UMAR and others... .. Respondents.

Punjab Tenancy Act, Ss. 68, 72—Compensation for enhancement and ejectment—two different matters.

:Held, that the occupancy tenant should receive in respect of improvements made such a sum as will, in spite of the enhancement of his rent enable him to recoup himself completely for his capital expenditure plus interest thereon incurred on the improvements in the same time as he would have so recouped himself, had such enhancement not been allowed. The main necessity is that the tenant should be properly and equitably compensated; which in the case of enhancement means that he should not be placed as result of the enhancement in a worse position for fully recouping himself within a reasonable period for capital expenditure than he was prior to the enhancement. Held further, that compensation for improvement on enhancements is a very different matter to similar compensation when due on ejection. 7 P. R. 1902 (Rev.) followed.

Revision from the order of the Commissioner of Ambala,

ORDER.

This order will deal with and dispose of appeals Nos. 45 and 46 and Revision Cases Nos. 123-127. I see no reason to interfere as regards the rates of enhancement which have been decreed. They are certainly not excessive as against the tenants.

The question of compensation for improvements has been dealt with at considerable length both by the original Court and by the Commissioner on appeal, and both have referred to *Natha Singh v. Bura* (1) in which the same question was considered though not perhaps with reference to fundamental principles.

There can be no doubt that S. 63, Punjab Tenancy Act, renders it imperative that an occupancy tenant who has made improvements to his tenancy, prior to a suit for enhancement of rent, should receive compensation for such improvements prior to any enhancement which may be decreed taking effect. S. 72 prescribes certain matters which have to be considered in determining the amount of that compensation; and the matters have to be considered in determining the compensation which it is equally imperative to award to an improving tenant who is to be ejected.

Nothing is provided in any section as to whether the occupancy tenant whose rent is being enhanced and the tenant who is to be ejected are to be compensated on the same or on different scales, in respect of improvements previously made. *A priori* it seems clear enough that there is a practical distinction between the two cases, in the first case the occupancy tenant is assured of the further and future enjoyment of the result of this improvements; while in the second the tenant will with equal certainty be deprived of them. In the latter case the maximum theoretical limits of compensation to be awarded is that portion of the capital expenditure incurred by the tenant on the improvement, plus interest thereon, which up to date remains unrecouped from the extra produce derived by the tenant from the improvement. The above seems to be the outcome of the considerations specified in S. 72, Punjab Tenancy Act; and a tenant who is to be ejected would generally be entitled to compensation for improvements on the above scale. It seems fair that an occupancy tenant with fixity of tenure as well as fixity of cash rent should receive compensation for improvements on enhancement of rent on a less liberal scale. Section 68 of the Act does not mention, much less does it prescribe such distinction between the two classes. On the other hand, so much discretion is allowed to the Revenue Court by the Punjab Tenancy Act. As regards the amount of compensation to be awarded that S. 68 can scarcely be interpreted as precluding such a distinction between

(1) 7 P. R. 1902 (Rev.)

the two classes of cases under reference. The rough practical rule laid down in the latter part of *Natha Singh v. Bura* (1) amounts in effect to this :—

That on enhancement of the rent of an occupancy tenant he must be paid as compensation such portion of the capital expenditure incurred by him on improvements made prior to such enhancement as remains unre-couped up to date. On the other hand, the more equitable theoretical rule would appear to be this :—

The occupancy tenant should receive in respect of improvements made such a sum as will, in spite of the enhancement of his rent, enable him to recoup himself completely for his capital expenditure, plus interest thereon, incurred on the improvements *in the same time* as he would have so recouped himself had such enhancement not been allowed. No doubt the calculations necessary for arriving at the above theoretical compensation would generally be difficult and often impracticable; but the considerations adduced above indicate that compensation for improvements on enhancement is a very different matter to similar compensation when due on ejectment.

It can be shown without much difficulty that in the former class of cases the compensation to be paid to the tenant should bear to the original capital cost of the improvement a certain proper fraction of the proportion which the amount of enhancement decreed, including therein any portion of such enhancement due to an immediately preceding enhancement of land revenue assessment at settlement bears to the value of the extra annual produce due to the improvement. The proper fraction itself depends on the period which has elapsed since the improvement was completed and on the rate of interest assumed. On the other hand, in the case of a tenant ejected the amount of compensation would be the above proper fraction of the original capital cost. It follows therefore that compensation in the first case, that of enhancement, should bear to compensation in the second case, the proportion which the enhancement decreed bears to the value of extra produce due to the improvement. Such proportion will generally be small and will depend largely on the pitch of the current land revenue assessment.

I quite agree with the Commissioner therefore that the compensation for improvements need by no means always equal the initial capital cost of the latter. Indeed that it should do so would be absurd even in some cases of ejectment, where, *e. g.*, the improvement was an old one. Such a result is not one contemplated by the Puniab Tenancy Act nor by *Natha v. Bura* (1). At the same time the whole question is one which in individual cases should be approached from the point of view of the tenant rather than from that of the landlord. The main necessity is that the tenant

should be properly and equitably compensated; which in the case of enhancement means that he should not be placed as a result of the enhancement in a worse position for fully recouping himself within a reasonable period for capital expenditure incurred than he was prior to the enhancement.

It is not quite easy to follow the Commissioners' calculations; but the upshot of them is that he takes one-tenth of the capital cost of construction of a well as the proportion due as compensation to the occupancy tenant on the assumption that the well was completed and in working order immediately before the institution of a suit for enhancement, the proportion being reduced *pro rata* in the case of wells which have been in existence for a longer period. The proportion of one-tenth is, I am disposed to think, fair, and certainly not illiberal as against the tenants. The present land revenue assessment of the areas involved in all the suits appears to average about 8 annas per kacha bigha which is equivalent to about Rs. 2-6-0 per acre. So far as I can calculate on the data available it would seem that, as a result of the enhancement now decreed, the occupancy tenants are at present paying roughly one rupee per acre more as rent, including land revenue and cesses, than they were prior to the decree and prior also to the recent re-assessment of land revenue. Rupees 10 per acre, on the other hand, is certainly not an over-estimate of the value of the extra produce per acre due to the presence of well irrigation. So that on the principle indicated in paragraph 5 above the proportion of one-tenth of original capital cost adopted by the Commissioner is not too small so far as the occupancy tenants are concerned. On the whole, then, I see no reason to interfere with the Commissioner's award of compensation. The two appeals and the three applications for revision with which this order deals are accordingly all dismissed. No order as to costs.

Revision dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 157 of 1920-21. (Decided on 30-7-1921).

Fagan, F. C.

SAMPURAN SINGH and others

Applicants

Versus

GURBACHAN SINGH and others

Respondents.

Punjab Land Revenue Act, S. 37—Mutation proceedings—appeal
against decree pending—mutation not to be deferred.

A decree is to be presumed to be correct until it is set aside, or modified. Hence mutation proceedings should not be deferred on a decree on the ground that an appeal against such decree is pending.

Revision from the order of the Commissioner of Lahore.

ORDER.

This order applies to all the three revision cases Nos. 157-159.

The facts appear sufficiently in the order of the Assistant Collector and the Collector.

The only ground on which it has been decided to postpone mutation in accordance with the decree of the Sub-Judge is that an appeal against the decree is pending in the High Court. The decree is to be presumed to be correct until it is set aside or modified and I know of no authority for deferring mutation proceedings on a decree on the ground that an appeal against such decree is pending. No such authority has been quoted.

Accepting the application I set aside the orders of the Collector and Assistant Collector and return the case to the Collector for mutation to be effected in accordance with the decree of the Sub-Judge dated 27th March 1919. Respondents to pay applicants' costs throughout.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 7 of 1921-22. (Decided on 12-12-1921.)

Fagan, F. C.

BAKHSI...

..

..

..

..Applicant

Versus

GANGA BISHEN and another .

..

...

..Respondents.

**Punjab Tenancy Act, S. 8.—Acquisition of occupancy rights—
Mauza Ganga, tehsil Sirsa.**

Held, that the contention to which reference is made in No. 6 of 1914. (Rev.) should be strictly applied in the class of cases to which it refers, whether in Mauza Ganga or elsewhere in the matter of acquisition of occupancy rights.

Revision from the order of the Collector, Hissar.

ORDER.

Fagan, F. C.—The facts of the case appear sufficiently in the orders of the Courts below. It is one of the type dealt with by my

predecessor in *Nawab Ali v. Lal Singh* (1) and from the same village: Mauza Ganga in Tehsil Sirsa. The question at issue is whether the plaintiffs respondents are entitled to occupancy rights under S. 8 of the Punjab Tenancy Act in the land in suit and has arisen out of Mr. Thorburn's decision in Revenue Case No. 406 of 1897-98. I fully concur with Sir John Maynard's ruling in *Nawab Ali v. Lal Singh* (1) I go somewhat further in thinking that the decision of 1897-98 went dangerously far in the direction of widening S. 8 of the Punjab Tenancy Act, to a degree not contemplated by its terms on the more or less hypothetical basis of a very dubious oral agreement between landlords and occupancy tenants in the early days of the history of the village. I hold that the contention to which reference is made in *Nawab Ali v. Lal Singh* (1) should be strictly applied in the class of cases to which it refers, whether in Mauza Ganga or elsewhere.

In the present case it appears that prior to 1882 the rent rate, as in *Nawab Ali v. Lal Singh* (1) was double or nearly double the land revenue and, as in that case, it is impossible to hold that the plaintiffs can be considered to be entitled to occupancy rights under S. 8 in pursuance of Mr. Thorburn's decision of 1898-99. The application for revision is, therefore, accepted and the plaintiffs' suit dismissed with costs throughout. They should be ejected at the end of the current agricultural year, after the original Court has settled the compensation, if any, which may be due.

Revision accepted.

IN THE COURT OF FINANCIAL COMMISSIONER OF THE PUNJAB.
Appellate Side

Revenue.

Fagan, F.C.

No. 20 of 1919-20 (Decided on 29-3-1921)

MELA RAM and another

Defendants-Appellants.

Versus

HAMI and others

(Plaintiffs)-Respondents.

Punjab Tenancy Act, Ss. 5 (2) and (1) (a) and 6 tenants paying Malikana—presumption under S. 5 (2)—does not arise—rebuttable, when “two generations had not been reached in 1887—nature of tenancy.

Where tenants are proved to have been paying malikana since 1891, no presumption under S. 5 (2), arises in their favour. Further, the presumption would be sufficiently rebutted when the “two generations” as required by S. 5 (1) (a) have not been reached in 1887. The tenants in such a case are occupancy tenants under S. 6.

Appeal against the order of Commissioner, Jullundhar Division.

(1) 6 P.R. 1914 (Rev

ORDER.

The order of the original Court (Assistant Collector) is obscure. The facts, however, are sufficiently clear from the order of the Commissioner.

In the first place it is clear that the appellants cannot take advantage of S. 5 (2) of the Tenancy Act inasmuch as they are paying *malikana* and have done so since 1891. Their counsel contends that since they paid no *malikana* for a period of 30 years up to 1891, therefore, the presumption under S. 5 (2) does arise in their favour. Such a contention is based, however, on a misapprehension of the meaning of the section. Further, assuming that Sobha was the first occupant of the land in suit and there is no evidence to the contrary, it is clear that the "two generations" required by S. 5 (1) (a) had not been reached in 1887; so that the presumption of S. 5 (2), even if it were applicable, would be sufficiently rebutted. The appellant's are clearly occupancy tenants under S. 6.

The sum at stake in this case is apparently Rs. 1-8-p. a. additional *malikana* enhanced by the Commissioner. The expenditure in the case probably runs into three figures as three learned counsel have appeared before me. The Commissioner has trebled the rate of *malikana* from 2 annas to 6 annas per rupee. Trifling though the total sum involved is, the proportion of enhancement on principle is high. I fix the *malikana* at 4 annas per rupee. Otherwise, the appeal is dismissed.

Appeal dismissed.

LAHORE HIGH COURT.

Appellate

No. 1069 of 1920. (Decided on 4-1-1921)

Civil.

Chevis, J.

BAHADUR and others

Appellants

Versus

RAM SINGH

Respondent.

Punjab Tenancy Act, S. 59 (1) (c) and (4)—Occupancy tenancy—contest between landlord and collaterals of tenants—onus of proof.

Where a contest is between the landlord on the one hand and the collaterals of the tenant on the other, the burden of proving that the common ancestor occupied the land lies on the collaterals.

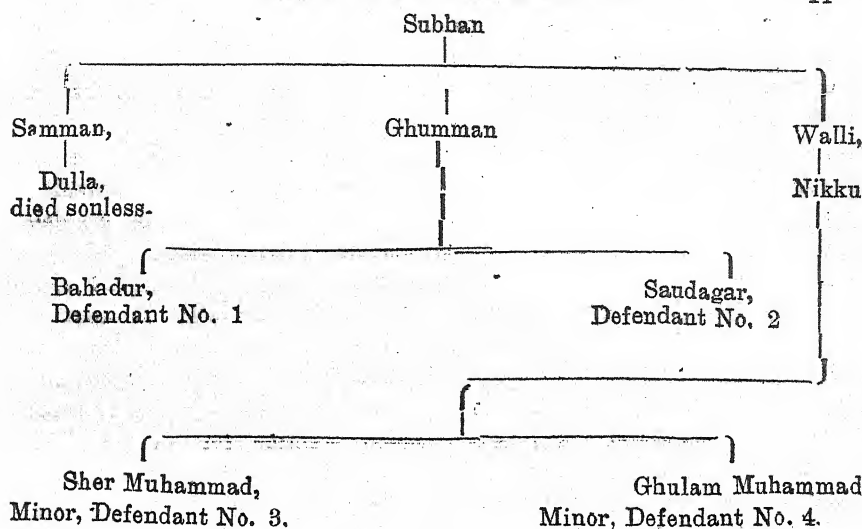
Second appeal from the decree of the District Judge, Ferozepore.

Appellants:—by Mr. Tek Chand.

Respondent:—by Messrs. R. Obbard and T. D. Khanna.

JUDGMENT.

The genealogical tree of the parties is as follows:—



The plaintiff who is the landlord sues for possession of the land left by Dulla who was an occupancy tenant. The defendants are cousins of Dulla and contend that the occupancy tenure is not extinct, as the common ancestor Subhan occupied the land. The earlier revenue entries show that Subhan's three sons, Samman, Ghumman and Walli, had a joint khata. Later on, Samman's share was separated from that of his two brothers, so the tenure certainly was not joint at the time when Dulla died, and Bakhshi Tek Chand who appears on behalf of the defendants-appellants, has not argued ground No. 4 of the appeal, which urges that the rule of survivorship applies. The only question, therefore, for my decision is whether the common ancestor occupied the land.

This question has been decided by the lower Courts in favour of the plaintiff who has been given a decree. On behalf of the defendants, it is urged that as the tenancy was shown as a joint one, the presumption is that Subhan's three sons got the land in succession to their father. But whatever the presumption may be in cases generally, in this particular case we find from the *parcha tasdiq* of 1881-82 that Subhan's three sons then stated that they had come from a village in Patiala in Sambat 1917 (1808 A. D.) and got the land from the contractors, i.e., the proprietors. The phrase *ham ne* might, of course, be used by the sons when describing a family transaction and might possibly refer to an act done by their father, so the meaning might be that their father had come from Patiala and taken the land, they accompanying him and succeeding him on his death. On the other hand, if the father had really come himself from Patiala, there seems no particular reason why the sons should not have stated that their father came and took possession of the land in 1860.

On behalf of the defendants-appellants, it is urged that as they are in possession and mutation of names has been effected in their favour by the revenue authorities the burden of proof lies on the plaintiff. It is, however, a case of contest between the landlord on the one hand and the collaterals of the late tenant on the other, and S. 59 of the Tenancy Act clearly lays down that collaterals are entitled to succeed only, provided that the common ancestor occupied the land. I am, therefore, of opinion that the burden of proving that the requirements of the proviso are fulfilled lies on the collaterals. As regards possession, it may be remarked that some of the defendants were cultivating the land in dispute as sub-tenants even during the life-time of Dulla. As regards mutation, I consider that the Civil Courts have to come to an independent finding in such cases and cannot base their decision merely on an opinion formed by the revenue authorities. I note, too, that it is a common practice for the revenue authorities to effect mutation in disputed cases in favour of the party in possession without attempting to decide except, perhaps in a summary manner, the disputed question of title. Reverting to the entry in the *parcha tasdiq* of 1881-82, I am unable to hold that it means anything else than that the persons who made the statement themselves came over from Patiala and occupied the land in 1860 A.D. So I see no reason for holding contrary to the lower Courts that it is proved that the common ancestor occupied the land.

I uphold the decree of the lower Courts and dismiss the appeal with costs.

Appeal dismissed.

LAHORE HIGH COURT.

Appellate,

Civil.

No. 199 of 1918. (Decided on 18-11-1921.)

Abdul Raooof and Martinezu, JJ.

SINGH RAM and others

Appellants

Versus

DATA RAM and others

Respondents.

Punjab Land Revenue Act, S. 118 (9) (XVII), Partition prohibited by a clause in a wajib ul-az—partition ordered—declaratory suit that land is not subject to partition-jurisdiction.

A clause in a wajib-ul-arz-contained an ageement that a certain land would continue to be joint and impartible. This was not repeated in a subsequent settlement. The collector directed its partition. A suit was brought in a Civil Court for a declaration that according to the above clause the land was not subject to partition.

Held, that the suit came clearly within the exemption provided by S. 158 (2) (XVII) and, therefore, cognizable by a Civil Court, no question of title being involved. I. P. R. 1915 (Rev) followed 89 P. R. 1892, 144 P. R. 1907 and 73 P. R. 1910 distinguished.

Second appeal from the decree of District Judge, Delhi.

Appellants:—By Mr. Sham Lal.

Respondents:—By Mr. Shamair Chand.

JUDGMENT.

Abdul Raoof, J. The suit out of which this second appeal has arisen related to a piece of common land in the village Nizampur. Tahsil Gohana. It consists of 56 *Bighas*, 18 *Biswas* and is known as Bani Laiqawala. In the Settlement of 1879, the co-sharers entered into an agreement that this would continue to be joint and impartible. The terms of the agreement were entered in the *Wajib-ul-arz* of that Settlement. In the subsequent Settlements, however, the entry was not repeated. The Collector has directed its partition by Pannas, and his order has been upheld in appeal by the Commissioner. Fifty-five of the proprietors of *Panna Mehr Chand* instituted this suit in a Civil Court for a declaration that the land was not subject to partition according to the terms of the *Wajib-ul-arz*. The defendants to this suit were 123 proprietors of the four others *Pannas* of the village. One of the pleas raised in defence was that the suit was not cognizable by a Civil Court. Both the Courts below have accepted this plea with the result that the suit has been dismissed.

The Plaintiffs have preferred this second appeal and it is urged on their behalf that the suit indirectly raised a question of title and has wrongly been thrown out on the ground that it is not cognizable by a Civil Court. Section 158, sub-section (2) of the Land Revenue Act, provides that; "A Civil Court shall not exercise jurisdiction over any of the following matters."

Among those matters is mentioned in clause (XVII)

"Any claim for partition of an estate, holding, or tenancy or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought"

This provision is very comprehensive and certainly includes any claim of the nature put forward in the plaint. The present suit clearly comes within the exemption provided by S. 158, clause (XVII) of the Land Revenue Act, no question of title being involved.

The proposition is so clear that it is hardly necessary to cite any authority in support of it. This very question has clearly been decided in *Lakki v. Malik Dost Mohammad Khan* (1). In this case with respect to a similar entry the Hon'ble Mr. A. H. Daick, Financial Commissioner, held.—

"That an entry in the *Wajib-ul-arz* prohibiting the partition of
(1) 1 P. R. 1915. (Rev.)

the Shamlat is not necessarily a bar, to partition and the Revenue Officer dealing with the partition should himself decide whether, under the circumstances of the case, the prohibition should prevail or not."

Dewa Singh v. Mst. Jawali (2). *Sundar v. Wazira* (3) and *Rahman v. Hasham* (4), relied upon by the plaintiffs have no bearing on the facts of the case, and the learned Senior Subordinate Judge has given good reasons for holding that they are distinguishable and are inapplicable to the present case. We have not the least doubt as to the correctness of the view taken by the courts below. We accordingly dismiss the appeal with costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision side

No 157 of 1920-21 (Decided on 30-7-1921.)

Revenue.

Fagan, F. C.

SAMPURAN SINGH

Versus

Applicant.

GURBACHAN SINGH

Respondent.

**Punjab Land Revenue Act, S. 37—Mutation proceedings—
appeal against decree pending—mutation not to be deferred.**

A decree is to be presumed to be correct until it is set aside, or modified. Hence, mutation proceedings should not be deferred on a decree on the ground that an appeal against such decree is pending.

Revision from the order of the Commissioner of Lahore Division.
ORDER.

This order applies to all the three revision cases Nos. 157-159.

The facts appear sufficiently in the order of the Assistant Collector and the Collector.

The only ground on which it has been decided to postpone mutation in accordance with the decree of the Sub-Judge is that an appeal against the decree is pending in the High Court. The decree is to be presumed to be correct until it is set aside or modified and I know of no authority for deferring mutation proceedings on a decree on the ground that an appeal against such decree is pending. No such authority has been quoted.

Accepting the application I set aside the orders of the Collector and Assistant Collector and return the case to the Collector for mutation to be effected in accordance with the decree of the Sub-Judge, dated 27th March, 1919. Respondents to pay applicant's costs through—out.

Revision allowed.

(2) 39 P. R. 1892.

(3) 144 P. R. 1907

(4) 73 P. R. 1910.

RAMJI LAL v. MANGAL SINGH.
LAHORE HIGH COURT.

15

Appellate

Civil.

No. 718 of 1921. (Decided on 28-7-1921.)

Shadi Lal, C.J. and Harrison, J.

RAMJI LAL AND OTHERS.

(Defendants)-Appellants

Versus

MANGAL SINGH AND OTHERS

(Plaintiffs)-Respondents.

(i) Punjab Land Revenue Act, S. 118—Partition-function of Revenue Officers.

Held, that it was never contemplated by the Legislature that complicated questions of title should be determined by a referee or a Revenue Officer and that the function assigned to him under the Act is one of a simple nature, namely, to determine the value of the produce which is admittedly joint or to divide it between the shareholders in accordance with their respective shares.

(ii). Punjab Land Revenue Act, S. 158 (2) (xix)—produce—whether joint or exclusively belonging to one person—question of titles—jurisdiction.

Before produce could be divided by the referee, some of sharers removed it. Thereupon the referee made over a whole khatti of barely to the other co-shares. In a suit brought by the first set of co-sharers for recovery of the price of barley alleging that it belonged to them exclusively, held, that the question whether the produce belong exclusively to one party or whether it is the joint property of both the parties is a question of title cognizable by a Civil Court.

Miscellaneous appeal from the order of District Judge.

Appellants:—by Mr. G. C. Narang.

Respondents:—by Mr. B. P. Khosla.

JUDGMENT.

Shadi Lal, C.J. The facts of the case, which are relevant to the question of jurisdiction arising in this appeal, are briefly as follows:

On the 8th April, 1918, the defendants made an application to the Revenue Officer for a division or appraisalment of the produce of a holding in which they were co-sharers with the plaintiffs. The Revenue Officer appointed a referee to divide and appraise the produce. It appears that on the 30th April, an appraisalment of the produce was duly made; and that before the produce could be divided the plaintiffs removed it and stored it in a house. Thereupon the referee made over a whole *Khatti* of barley to the defendants in lieu of their share of the produce.

The plaintiffs after making an unsuccessful attempt to get redress through the revenue authorities have brought the present suit for the recovery of the barley, alleging that it belonged to them exclusively and that the referee had no right to deliver it to the defendants. The question for consideration is whether the suit is or is not cognizable by a Civil Court. Now, S. 158, sub-section (2), of the Punjab Land Revenue Act enumerates the various matters which are not cognizable by a Civil Court, and one of the matters mentioned therein is

"Any claim to set aside or disturb a division or appraisement of produce confirmed or varied by a Revenue Officer under this Act."

Now, it is clear that the dispute between the parties relates to the ownership of the barley delivered by the referee to the defendants, and we consider that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer, who is required only to divide the produce which is admittedly joint or to determine its value. The learned counsel on both sides express their inability to cite any judgment which has a direct bearing upon the question before us, but in view of the wording of S. 144 of the Land Revenue Act, which empowers a Revenue Officer to divide or appraise the produce in which two or more persons are jointly interested, and of clause (19) of S. 158, which excludes from the jurisdiction of the Civil Courts any claim to set aside or disturb a division or appraisement of the produce made by a Revenue Officer under the Act, we are of opinion that the question of title to the produce is not one which a Revenue Officer as empowered to determine.

The onus is on the defendants to satisfy the Court that the claim made by the plaintiffs is not within the cognizance of a Civil Court, and having regard to the provisions of the law indicated above we hold that they have failed to discharge that onus. We consider that it was never contemplated by the Legislature that complicated questions of title should be determined by a referee or a Revenue Officer, and that the function assigned to him under the Act is one of a simple nature, namely, to determine the value of the produce which is admittedly joint or to divide between the share-holders in accordance with their respective shares. The present claim is certainly not one of that character. Neither the language of the Statute nor the general principles of law lend any support to the contention that the Revenue Officer, and not the Civil Court, should determine whether the produce belongs exclusively to one party or whether it is the joint property of both the parties:

We accordingly concur in the conclusion reached by the learned District Judge and dismiss the appeal with costs

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 70 of 1920-21. (Decided on 17-10-1921.)

Fagan, F.C.

RAHMAT ALI

.....*Applicant*

Versus

ABDUL RAHMAN and others.....*Other side.*

Punjab Tenancy Act, S. 5 (i) (c)—occupancy rights—acquisition of.

Where the predecessor-in-interest of the landlord had admitted the correctness of the statement of the ancestors of the tenant to the effect that the land in suit had been brought under cultivation in Sambat 1916, (A. D. 1858) and it was clear beyond doubt that the latter had been settled in the village with the founder.

Held, that the present tenant was an occupancy tenant under S. 5 (1) (c)
Revision against the order of Commissioner, Jullundur Division.

The facts of the case appear sufficiently in the judgments of the Courts below. I am not prepared to agree with the Collector and the Commissioner in their interpretations of the statements contained in the *parcha tasdiq*. That made on 9-2-1882 by the then landlords before the Extra Assistant Commissioner definitely admitted the correctness of the statement made by the tenant, a portion of which was that he had brought the land now in suit under cultivation in Sambat 1916—A.D. 1859. That tenant was the legal predecessor-in-interest of the present plaintiff and there seems to be no doubt that he settled in the village with the founder thereof. The requirements of S. 5 (1) (c) of the Tenancy Act are thus established in favour of the plaintiff. I, therefore, accept the application and restore the decree of the original Court. Respondent will pay appellants costs in both appellate Courts as well as in this Court.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 146 of 1920-21. (Decided on 28-7-1921).

Fagan, F. C.

MOHANT SUNDAR SINGH

Applicant

Versus

PT. CHHAJJU RAM

Other side.

**Punjab Land Revenue Act, S. 37—gift of occupancy rights—
mutation in favour of donee—absence of landlord's consent—no bar.**

Held, that the absence of consent of a landlord to a gift of an occupancy holding is no bar to a corresponding mutation in favour of the donee—vide Standing Order No. 23; paragraph 11.

Revision against the order of the Commissioner, Jullundur Division.

ORDER.

1. The facts of the case are sufficiently clear from the orders of the Collector and Commissioner.

As regards the effect of want of consent on the part of the landlord to a transfer by an occupancy tenant, both officers have overlooked the instructions contained in Standing Order No. 23, paragraph 11. The absence of such consent is of itself no bar to mutation.

Nor do I see that there is sufficient ground for holding that the gift by Pal Singh in favour of the Gurdwara is tainted with bad faith.

I accordingly accept the application for revision and direct that mutation of the gift be made in favour of the Gurdawara in the name of the manager for the time being.

No order as to costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Appellate Side.

Revenue.

No. 18 of 1920-21. (Decided on 17-10-1921).

Fagan, F.C.

Guru ATMA SINGH, *Appellant*

Versus

BABU *Respondent.*

Revenue Records—adverse entries—suit for declaration in respect thereof—cause of action.

Where certain alterations in the revenue records effected on certain dates were not shown to have been made as the result of any lawful proceedings, to which the plaintiffs or their predecessors were parties, cause of action for a declaratory suit to challenge the same could not be said to have arisen on such dates. 20 P.R. 1900 Rev. followed

Punjab Land Revenue Act, S. 13—appeal—suit dismissed on plea of limitation alone—reversal on appeal—case to be remanded for disposal on merits.

Where the Appellate Court rejects an appeal merely on the ground of limitation, the case should be remanded by the Financial Commissioner on appeal for disposal on merits when he holds the suit to be within time.

Revision against the order of the Commissioner, Jullundur Division.

ORDER.

The facts in the case have to be gathered from the lengthy and not particularly luminous judgment of the original Court : the Commissioner by his appellate order of 26-12-1920 has dismissed the suit of the plaintiff (present appellant) not on the merits but on the ground that it is barred by limitation. As to this it is to be observed that defendants did not plead limitation in the original Court, nor did they raise it in their grounds of appeal before the Commissioner. Presumably it was raised in the course of argument for the defendants, then appellants.

As regards limitation, the Commissioner finds, I understand, that the cause of action for the purposes of Article 120 of the Schedule of the Limitation Act arose in 1903-04, or possibly in 1913-14, so that the suit at its date of institution was beyond time under the above Article, which is the one applicable to the present case. It appears that certain alterations were made at one or other or at both of the above dates in those entries in the land records which are relevant to the case ; but it does not appear that the parties and certainly not the present appellants (the plaintiffs) were parties to any lawful proceedings resulting in such alterations. It appears therefore that the principle underlying P.R. Revenue No. 20 of 1900 is applicable to this case so that the cause of action cannot be attributed to either of the above dates. If, as appears to have been the case, the Commissioner considered it proper to deal with the question of limitation it would have been more convenient if he had framed a definite issue on the matter, including in it the question of the date of the cause of action, and remitted it to the original Court for trial. This course, however, was not followed. I do not consider it needful to adopt it now in view of the fact that the cause of action was in the plaint definitely assigned to the *rabi* harvest of 1919 and the pleadings contain no averment definitely contradicting this.

Under all the circumstances of the case I am not prepared to agree that the suit is barred by limitation as held by the Commissioner.

I therefore accept the appeal and setting aside the Commissioner's order return the case to him for decision of the appeal on the merits. The costs of the present proceedings will be costs in the appeal to the Commissioner.

Revision Side.

No. 123 of 1920-21. (Decided on 8-6-21.)

Fagan, F. C.

Revenue.

LABH SINGH...

*Versus**Applicant*

CROWN

Other side.

**Lambardari—dismissal—Punjab Land Revenue) rule 16 (ii) (d)—
criminal propensities of the Lambardar—summary inquiry unjustified
—mere police reports are not sufficient grounds to act upon.**

In dismissing a Lambardar the Collector purporting to act under Land Revenue r. 16 (ii) (d) relied on his own knowledge, police report and on the statement of the Lambardar himself.

Held, it was not proper to treat the contents of the police reports as sufficient evidence not requiring corroboration. Oral evidence of police or other, such as that of Zaildars should have been heard in corroboration, and a brief record of their statements made in the presence of the Lambardar.

Revision against the order of the Commissioner of Lahore Division.
O R D E R .

The order of dismissal which has been passed by the Collector is apparently one under Land Revenue Rule 16 (ii) (d).

No such criminal proceedings as are contemplated by Rule 16 (ii) (a) appear to have been taken against him in respect of the alleged criminal propensities which are the grounds of the order.

The Collector in his rather summary proceedings has, it seems, acted.

- (1) on his own knowledge,
- (2) on police report, and
- (3) on the statement of Lambardar himself.

No evidence of police or other witnesses has been recorded and there has been no sort of formal enquiry.

I have no intention of insisting on incitus of judicial evidence or on anything like full judicial procedure in cases of this kind, more specially when the tract of country concerned is distinctly addicted to crime. But in this case, the proceenidgs have been to summary. It is not proper to treat the contents of the police reports as sufficient evidence not requiring corroboration; oral evidence, police or other, such as those of Zaildars, should have been heard in corroboration, and a brief record of their statements made in presence of the applicant. I return the case for fresh disposal after further enquiry on the above lines.

Pending such fresh disposal the applicant will remain under suspension from his Lambardari but the order of dismissal is set aside. It is not clear to me why if applicant is of the character and reputation found by the Collector criminal proceedings for putting him on heavy security have not been taken.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 152 of 1920-21. (Decided on 12-12-1921.)

Fagan, F.C.

GANESHI and others

*Applicants**Versus*

TRIKHA and others

*Other Side.***Punjab Tenancy Act, S. 22—enhancement of rent—well-irrigated area—good harvest.**

In a well-irrigated area, which was not proved to be inferior and wherein from Rabi 1916 to Kharif 1920 inclusive, on an average, about 10 bighas of crops had been matured at each harvest, a malikana of one anna per rupee of land revenue was held to be proper in the case of occupancy tenants under S. 5 (1) (a).

Revision against the order of the Commissioner. Ambala Division.

ORDER.

The facts of the case appear from the orders of the Courts below.

The defendant's tenants are undisputedly occupancy tenants under S. 5 (1) (a) of the Punjab Tenancy Act. Nearly the whole of the land in suit is well irrigated. The original Court has included a good deal of irrelevant or doubtfully irrelevant matter in its judgment. It has refused enhancement and dismissed the suit on the grounds (1) that the land is inferior and (2) that the defendant tenants are indigent. Obviously ground (2) is entirely irrelevant. As to ground (1) it is by no means proved that it is inferior or so inferior that it cannot pay a *malikana* of 2 annas per rupee. It seems extraordinary that the original Court omitted to examine the entries about the land in suit in the *khasrah girdawari* . I am surprised also that the Commissioner did not have the omission rectified. An abstract of the entries has been obtained and shows that from Rabi 1916 to Kharif 1920 inclusive of an average about 10 bighas of crops have been matured *at each harvest* out of a total area of 18 bighas. The finding of the original court is then quite unwarranted. I accordingly accept the application for revision and decree a malikana of one anna per rupee of land revenue over and above such land revenue and cesses.

No order as to costs. The case was not by any means satisfactorily handled by the original Court.

*Application Accepted.*IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 149 of 1920-21. (Decided on 12-12-1921).

Fagan, F. C.

KIDARA and others

Applicants

Versus

Other Side.

JHABRU KHAN

**Punjab Tenancy Act, Ss. 5(2) and 22—occupancy rights under—
acquisition of—malikana.**

Where for more than 86 years before the date of suit no rent had been paid in addition to land revenue and cesses, the tenants were held to have acquired tenancy rights under S. 5 (2), in the absence of any evidence to the contrary, and the Financial Commissioner reduced the malikana to one anna in the rupee from six annas decreed by the trial court.

Revision against the order of the Commissioner, Ambala Division.
ORDER.

This order applies to Revision Cases Nos. 149, 150 and 151 which are all identical in matter. The facts appear sufficiently in the orders of the courts below.

The original Court has misunderstood the rates of 1853 which it quotes $-2.2 \frac{9}{16}$ and $-2.8/8 \frac{3/4}{16}$ per bigha. Both of these were revenue rates used for purposes of the *tafriq baah*. It is not the case that the first was a revenue rate and the second a rent rate. Indeed the difference between them, $15/5 \frac{3/4}{16}$ pies per bigha, would be, to say the least, an odd rate of *malikana* to fix for tenants. The records show that since 1879 the defendants have been paying at revenue rates without *malikana*. It follows that for more than 36 years before the date of suit no rent has been paid in addition to land revenue and cesses and there is nothing to rebut the consequent presumption that the defendants satisfy the requirements of S. 5 (2) (a) of the Tenancy Act and that they are occupancy tenants under that section. The application is accepted with costs in his court and in that of the Commissioner, and the *malikana* decreed is reduced to one anna per rupee of land revenue in addition to land revenue and cesses.

Application Accepted.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1922.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Reenue.

No. 4 of 1921-22 (Decided on 18-2-1922)

Casson, F. C.

BHAGWAN SINGH and others

...

Defendants-Appellants.

RAM NARAIN SINGH and others.. ...

Plaintiff-Respondent.

Punjab Tenancy Act, Ss. 68, 22, 24 and (19)—scope and application of S. 68—discretion of court under S. 24—compensation for improvement outside tenancy, whether may be allowed—assessment of compensation.

No doubt, S. 68, which, in certain cases, renders payment of compensation obligatory, deals only with improvement, made on a tenancy, but the definition of improvement [S. 4 (19)] clearly includes, provided certain conditions apply, improvements not actually executed on the tenancy. Again, S. 68 limits the discretion allowed by S. 24 read with S. 22, but does so in favour of the tenants, and S. 24, in no way enables landlords to claim enhancement as of right, even where S. 68 does not apply. In fact, except for the limitation in favour of the tenant imposed by S. 68, the court has full discretion in applying S. 24.

The underlying principles of S. 68 may be applied when exercising the discretion given by S. 24. Compensation, therefore, may be allowed for a well, which, though not built on the tenancy, is yet intended and used for the benefit thereof and such compensation may be calculated at —1/10 of the gross produce.

Appeal against the order of the Commissioner, Jullundur Division.

ORDER.

Bhagwan Singh appeals regarding two points (i) against enhancement of rent; (ii) against the decision not to allow compensation for improvement in the share of a well constructed outside the limits of the tenancy.

I decline to interfere on the first point. The Commissioner has concurred with the original Court except that he has reduced the enhancement of rent to 9 annas from present -/6/- instead of -/10/-

from present -/6. Thus he has concurred with the original Court that an enhancement to 0-9-0 is justified. I agree, and in view of the concurrence to this extent of both the Courts, I do not consider it necessary to discuss the arguments, specially as the amount of money involved is so petty. The Commissioner had made a provision in favour of the appellant-defendant as regards further enhancement I make no comment as to how far this is binding on any Court trying a subsequent suit for enhancement, as the matter is not before me. I reject the appeal against enhancement of rent.

Now as to compensation for the well, the Commissioner has confirmed the finding of the Assistant Collector, but I hardly think that this matter has been thoroughly considered. No doubt, S. 68, which, in certain cases, renders payment of compensation obligatory. deals only with improvements made on a tenancy; but the definition of improvement [S. 4 (19) clearly includes, provided certain conditions apply, improvements not actually executed on the tenancy. Again, S. 68 limits the discretion allowed by S. 24 read with S. 22, but does so in favour of the tenants, and S. 24, in no way, enables landlords to claim enhancement as a right, even where S. 68 does not apply. In fact, except for the limitation in favour of the tenant imposed by S. 68, the Court has full discretion in applying S. 24

The principles governing compensation for improvements, are laid down in Punjab Record (Revenue), 2 of 1921, and need not be recapitulated. No particular mention is made in that ruling of cases outside the scope of S. 68, but it is, in no way, inconsistent with the ruling to apply its underlying principles, when exercising the discretion given by S. 24. The main principle, as set forth in the ruling, is that, before the rent of an occupancy tenant is enhanced, he should receive, in respect of any improvement made, such a sum as will, in spite of the enhancement of rent, enable him to recoup himself completely for his capital expenditure plus interest, in the same time, as he would have so recouped himself, had no such enhancement been made. This ruling is absolute where S. 68 applies; and practically it is very difficult to say, in any particular case to what extent S. 68 is or is not applicable in cases like the present one. The well, it is true, is not built on the tenancy, but it was intended for and is used for the tenancy in so far as it belongs to appellant, and, in so far as its water irrigates the land of the tenancy, such irrigation is an improvement on the tenancy. Thus even where a Court has a free scope for discretion, it is wise to apply the principles laid down in Punjab Record ruling above quoted. Probably, the Courts would feel more sympathy towards the tenant in cases, where the landlord is using the

improvement as a lever for exacting an enhancement of rent; but the tenant's equitable claim for compensation is not confined to such cases but applies in all cases, where the tenant has spent money on improvements in the expectation that he will be able to recoup himself without being called on to pay extra rent.

The first Court mentions decisions by the Commissioner of Ambala, disallowing compensation for wells constructed outside the limits of tenancies on the ground that the landlord gets nothing when the tenancy terminates, while the irrigation can be stopped against the landlord's wish. This line of argument may be true enough in cases of ejection, but has no application under the circumstances of the present case. Admittedly the plaintiffs own the whole of the village and have admitted before me that the appellant has no holdings except that, now the subject of dispute. Defendant-appellant has 18th share in the well; and as long as he retains that share it, is obvious that he will use the water for this particular land. If he sells his share, even then the water must be used on some land belonging to plaintiffs whether this particular land or other land. Apart from this, surely, it cannot be contended that for the time being, at any rate, the improvement is neither executed for the benefit of this tenancy nor has it been made directly beneficial to it. I hold that the appellant is entitled to compensation.

In this case, No. 4, the well cost Rs. 700 and it was constructed six years ago; and Bhagwan Singh appellant has 1/8th share. Punjab Record ruling, 2 of 1921, was passed in dealing with the revision from an order passed by myself as Commissioner of Ambala. In that particular case I adopted 1-10th of the capital cost as the proportion due as compensation to the tenant on the ground that 1 to 10 fairly represented the shares in the particular case of the landlord and tenant in the produce of the tenancy as represented by the rent on the one hand and the balance left to the tenant on the other, and naturally, the Financial Commissioner did not mean to lay down the 1-10th as the fraction in each case.

An examination of the assessment report shows that the revenue is wrongly 1-8th of gross produce; but allowing for increased prices since settlement, we may put this at 1-10th. The assessment report also indicates that the value of produce of an acre of *chahi* land is about 40 and of an acre of *barani* land about 25 difference 15. These figures also correspond to about ten times the revenue assessed. The tenant in this case appears to irrigate 4 13/20 kanals of this tenancy from his 1-8th share of the well. His capital expenditure was 700/8-88; and allowing for interest at 6 per cent, he has recouped himself in 6 years some 10. The increase in rent is 1-12-28 annas and, in produce, is estimated at 107 annas so the sum due is 28/107 : 78-20 Rs.

This sum I award in compensation and the rent will not be enhanced until this Rs. 20 has been paid

LAHORE HIGH COURT.

Appellate,

Civil.

No. 914 of 1919. (Decided on 3-1-1922)
Scott-Smith and Harrison, JJ.

CHUHA and others

Appellants

Versus

ASA and others

Respondents

Punjab Tenancy Act, S. 77 (3)—proviso— applicability.

Where the landlords alleged that the occupancy tenants had no longer a right of occupancy in a certain land, they having lost their right in accordance with the conditions appearing in the *wajib-ul-arz*, held, that the question whether occupancy tenants had lost their rights or not was not triable by the Civil Court, and having regard to the proviso to S. 77 (3) of the Tenancy Act, the Court should have endorsed that question and returned the plaint for presentation to the Collector.

Second appeal from the decree of the District
 Judge, Hoshiarpur.

Appellants :—by Mr. Sundar Das.

Respondent :—by Mr. C. L. Gulati.

JUDGMENT.

Scott-Smith J.—The facts of the case, out of which the present second appeal arises, are given in the judgment in chambers of *Rattigan, C.J.*, of the 20th October 1919, by which he referred the case to a Division Bench. The questions for our consideration are :—

(1) Whether the plaintiffs, who claim to hold under a lease from the occupancy tenants of the land in question, are tenants of the landlords, defendants-appellants. (2) Whether it is open to the Civil Courts, even if they had jurisdiction to entertain the claim, to decide the question whether the occupancy rights originally enjoyed by defendants 17-20 had terminated, and (3) whether the Civil Courts can decide the question whether the lease granted by the occupancy tenants for a period of ten years is invalid under the provisions of the Tenancy Act.

In *Kesar Singh v. Mangal Singh* (1) a Division Bench of the Chief Court held that the lessees of land held by occupancy tenants are not themselves the tenants of the landlord, but a contrary view was held by Sir Michael Fenton, Financial Commissioner, in the case reported as *Waswa Singh v. Mahana Singh* (2). We do not find it necessary to decide at present which of these views is correct, because, in our opinion, it was not open to the Civil Courts to decide whether defendants 17-20 had lost the occupancy rights which they originally had in the land,

(1) 84 P. R. 1913.

(2) 1 P. W. R. 1916 (Rev.)

having regard to the proviso to S. 77 (3) of the Punjab Tenancy Act which lays down that where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by O. 7, r. 10, Civil Procedure Code, and return the plaint for presentation to the Collector. The proviso also lays down that on the plaint being presented to the Collector, the suit should be heard either by him or by an Assistant Collector of the first grade according as the value exceeds Rs. 1,000 or not. Now a suit by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right, is exclusively triable by a Revenue Court under S. 77 (3) (d) of the Punjab Tenancy Act.

In the present case, the landlords allege that the occupancy tenants have no longer a right of occupancy in the land in question, they having lost that right in accordance with the condition appearing in the wajib-ul-arz. It was, therefore, necessary to decide in the present case whether the occupancy tenants had lost their right or not. Issue No. 4 was accordingly framed by the trial Court. The trial Court and the District Judge concurrently held that the occupancy tenants had not lost their right; in other words, that they had a subsisting right of occupancy. This, in our opinion, was a matter which they had no jurisdiction to decide, having regard to the proviso to S. 77.

We, therefore, accept the appeal and direct, in accordance with the provisions of S. 100 (3) of the Punjab Tenancy Act, that the decree of the Munsif, first class, dated 1st August 1918, be registered as that of an Assistant Collector of the first grade in the District of Hoshiarpur. The records will, therefore, be returned to the District Judge who will return the appeal filed in his Court to the appellants in order that they may institute it in the Court of the Collector. Costs in this Court will be costs in the case.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side

No. 80 of 1921-22. (Decided on 1-8-1922).

Revenue

King, F.C.

SARDAR SINGH... .. Applicant

Versus

LAL KHAN... .. Other side.

Punjab Land Revenue Act, S. 3—exchange of land not detri-

mental to the party backing out of a transaction—Collector should sanction mutation.

Where the party to an agreement of the exchange of land admittedly tries to back out, and the exchange does not appear to be detrimental to him, mutation must be sanctioned in favour of the other party. The effect of the order of mutation is not to make any transfer of land or, in any way, to alter the position of the parties inter se, but merely to enable the party in whose favour it is passed to take legal proceedings to enforce the agreement.

Revision from the order of Commissioner of Rawalpindi Division.

ORDER.

Casson, F.C.—(3rd May, 1922)—Respondent, it appears to me, has backed out of a transaction to which he had agreed and which he had given effect to. He may later on have thought that he could get a better bargain as Sardar Singh, applicant, may have failed to keep a promise as to payment of money. If, however, the case had been an ordinary mutation case, I have little doubt that Sardar Singh would have succeeded and that Lal Khan would have been left to seek his remedy in the Civil Courts.

The mere sanction to the exchange given by the Collector would not have effected the mutations which seem to be in dispute. It would merely have removed a legal obstacle to the exchange and, in my opinion under the circumstances, the Collector should have sanctioned the exchange, *qua* Land Alienation Act, if he saw no objection to it, and left the parties then to fight the matter out on the lines of an ordinary mutation case. I do not think that either the order of the Collector or that of the Commissioner sufficiently deals with the matter. Proper order will be I think, to remand the case to Collector for fresh decision after considering whether there is any objection to the exchange supposing as alleged that it was actually agreed to by the parties and has actually taken place.

ORDER,

King, F.C.—(1st August 1922.)—Mr. Casson's order of the 3rd May, 1922, will be read as a part of this order. Lal Khan who was present to-day admits that he is in possession of the land given to him in exchange by the petitioner, Sardar Singh. Also that Sardar Singh has bricks upon his, Lal Khan's, land, which Sardar Singh has taken in exchange. Intervener, Ch. Shahbaz Ali, who is represented by his son, Ch. Sultan Ali, denies that the exchange has actually taken place. But, in the face of Lal Khan's statement, I think, his denial is futile. I agree with Mr. Casson in thinking that Lal Khan denied the exchange, because, he wanted to back out of the transaction.

It does not appear that the exchange is at all detrimental to Lal Khan and except for Lal Khan's denial, the exchange would undoubtedly have been sanctioned. I do not think that Lal Khan should be allowed to repudiate his transactions in this way. I shall, therefore, accept this application and, cancelling the order of the Deputy Commissioner, I shall sanction this exchange of land. I note here that the effect of this order will not be to make any transfer of land or, in any way, to alter the position of the parties *inter se*. The only effect of this order will be to enable the petitioner to take legal proceedings to enforce the agreement, which has been arrived at between him and Lal Khan. I do not think that the petitioner is responsible for this litigation. The person really responsible appears to me to be, interverer, Ch. Shahbaz Ali. I, therefore, direct that Ch. Shahbaz Ali shall pay the costs of Sardar Singh throughout.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 56 of 1921-22. (Decided on 9-2-1922).

Casson, F. C.

Mst. Aso *Applicant*

Versus

JAGDIP SINGH and another *Other Side.*

(i) **Punjab Tenancy Act, S. 84—Revisional powers of the Financial Commissioner—orders of Courts below not sound in law but substantial justice done—no interference in revision.**

Even if the orders of the first Court and of the Commissioner are not sound in law, the Financial Commissioner, on revision, is not bound to interfere where substantial justice has been done.

(ii) **Punjab Land Revenue Act, Ss. 111 and 158—scope of—suit for partition of holding—when maintainable in Civil Court.**

The partition procedure under Land Revenue Act provides for the partition of holding by executive procedure without the necessity of a suit in a Revenue or Civil Court and S. 158, Land Revenue Act, bars the jurisdiction of Civil Courts in partition cases, in all cases which a Revenue Officer is empowered by that Act to dispose of. But where it is impossible for a plaintiff to get partition of the defendant's holding under S. 111, Land Revenue Act, there is nothing to prevent a suit being brought for partition and the jurisdiction of Civil Court is not barred in such cases.

(iii) **Punjab Tenancy Act, S. 77 (3) (i)—cultivator holding land partly in occupancy rights and partly without occupancy rights—holding constituting one tenancy—suit for partition—jurisdiction of Revenue Court.**

Where a cultivator holds the land in dispute partly in occupancy rights and partly without occupancy rights and the holding constitute one tenancy—a parcel of land held by a tenant of a landlord under one lease or set of conditions, held, that a suit to eject the defendant from the portion which she cultivates as a tenant-at-will (after determination of the area over which she holds non-occupancy rights) is cognizable by a Revenue Court under S. 77 (3) (i).

Revision from the order of Commissioner, Ambala Division.

ORDER.

The facts of the case are fully as follows :—

Mst. Aso, defendant, holds the land in suit under plaintiff as landlord. This land consists of a holding, over half of which defendant is in possession as in occupancy tenant, while of the other half she is in cultivating possession as a tenant-at-will.

Plaintiff now seeks to eject her from the portion which she cultivates as a tenant-at-will, but the portions comprising the occupancy and non-occupancy have never been physically defined, hence the real point at issue is the determination of the area over which Mst. Aso holds non-occupancy rights only.

Defendant originally held all the land in occupancy right but fell into arrears of rent; and, in consequence, a decree was passed against her in 1896, ejecting her from half of the occupancy tenancy. The order did not specify the definite area which she was to vacate. The plaintiff subsequently issued a notice of ejectment on the defendant respecting half of the land and received formal entry in June 1913, but in practice the plaintiff was no better off. He then proceeded to apply for partition under S. 111 of the Land Revenue Act, but failed to obtain the assistance he sought, the case not coming within the purview of that section. He then brought a suit in a Civil Court. The Munsif held that, owing to S. 77 of the Tenancy Act, the suit would not lie in a Civil Court. He then brought his case, claim for possession through partition before the Sub-Divisional Officer, Rupar, as a Revenue Court. Defendant resisted the claim on the ground that the holding was joint, and she could not be ejected until it was legally determined over what area her status is that of a tenant-at-will only, and disputed the competency of a Revenue Court to determine that question. The Sub-Divisional Officer held that the plaintiff was entitled to eject defendant and proceeded to determine the area from which she was to be ejected. This he did by sending the Tahsildar to divide the land into two portions, as fairly as possible. Lots were then drawn, and a decree for ejectment was passed in respect of the lot which fell to plaintiff.

The Collector, on the appeal coming before him, reluctantly held that the Assistant Collector had really been partitioning the land under Chapter 9 of the Land Revenue Act, a course which had already been held

to be inapplicable, and he was doubtful whether any remedy existed for the state of affairs produced by the order of 1896 unless that order were revised.

The Commissioner restored the order of the Assistant Collector holding that Assistant Collector had rightly disposed of the matter under S. 77 (3) (2) of the Tenancy Act.

It will be seen that all the three lower Courts are in agreement on one point, viz., that plaintiff is in a very unfortunate position if unable somehow or other to find a remedy against defendant's obstructive tactics.

The Commissioner has restored the order of the first Court which does provide the desired remedy. Even supposing that the orders of the 1st Court and of the Commissioner are not sound in law, the Financial Commissioner on revision is not bound to interfere, and in practice does not interfere where substantial justice has been done. This alone would be sufficient ground for not interfering, as I fully agree that the plaintiff had a real grievance.

The Collector, however, on appeal could not be guided by such considerations and had to give his decision according to his view of the law. I am not at all sure, however, that his view was correct.

The partition procedure under the Land Revenue Act, provides for the partition of holding by executive procedure without the necessity of a suit in a Revenue or Civil Court, and S. 158, Land Revenue Act, bars the jurisdiction of a Civil Court in partition cases, in all cases which a Revenue Officer is empowered by this Act to dispose of.

The jurisdiction of a Civil Court is thus not barred in the present case, for it has been expressly decided that it is impossible for the plaintiff in this case to get partition of the defendant's holding under S. 111, Land Revenue Act.

A reference to S. 54, Civil Procedure Code, and to O. 20, r. 18 and to the words "or otherwise" in S. 110, Land Revenue Act, support the view that there are means of securing partition other than under S. 111, Land Revenue Act. Normally a plaintiff with a cause of action as in the present case could bring a claim for partition whether against a co-sharer or for partition of his tenants' holding. He is barred by S. 158 in getting the aid of a Civil Court for partition of a joint holding. He is not barred by that section from getting his tenants holding divided into component parts. The claim accordingly was preferred in a Civil Court. That Court, and in my opinion quite rightly, held that its jurisdiction was barred by S. 77 (3) of the Tenancy Act. The suit is clearly one under S. 77 (3) (i) of the Tenancy Act, provided the whole of defendant's holding can be called a "tenancy." A tenancy "is a parcel of land held by a tenant of a landlord under one lease or set of conditions." In view

of the fact that the original parcel of land has never been divided physically into two holdings, and as, moreover, the whole defence is based on the allegation that the holding is one holding, and defendant has obstructed its division into its component parts of occupancy and non-occupancy land, I hold that the holding is one "tenancy" and that a Revenue Court has cognizance. Revision rejected.

Having granted a decree the Court should, no doubt, in framing the decree, have complied with S. 54 of the Civil Procedure Code—Chapter IX of the Land Revenue Act would then have applied.

No injustice has, however, resulted from the method adopted. Revision rejected.

Revision rejected.

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 28 of 1921-1922. (Decided on 11-2-1922).

Casson, F.C.

GHANI AHMAD

Applicant

Versus

AMIN CHAND and others

Other side

Punjab Tenancy Act, S. 14—Practice—Revenue Courts are bound to follow Civil Courts in recognition of a person's status.

Where a decree exists in plaintiff's favour for possession as a mortgagee-landlord the decree in effect recognizes his status as mortgagee owner and his title to be put in possession. The decree does not create his status but merely recognises his status. The Revenue Courts are bound not to deprive persons of rights recognised by the Civil Courts. So, where a Civil Court has recognised plaintiff's status the plaintiff is entitled to claim dues under S. 14

1 P.R. 1893, (Rev.) 82 P. R. 1894; 4 P.R. 1901, Rev. 13 P.R. 1901 Rev. 6 P.R. 1905 Rev. referred. 20 P.R. 1917 distinguished.

Revision from the order of Commissioner, Ambala Division.

ORDER.

The claims in these eight cases Nos. 28 to 35 are against different defendants, but Amin Chand and Bhagwana are *pro forma* defendants in all cases and sole defendants in one case No. 35. The only respondents who have appeared or are represented by counsel are Ausaf Hussain and Khurshed Hussain, the defendant-respondents in this case No. 28. This order will dispose of the main facts in all cases.

The facts are given in the judgment of the lower Courts and the claim, as framed, is based on the allegation that the decree obtained by plaintiff's predecessor was executed and formal possession was obtained in June 1914. The Courts have dealt with the case on this question whether

possession was or was not obtained, and following ruling Punjab Record 20 of 1917, the two appellate Courts have held that possession cannot be considered to have passed, and, consequently, they have rejected his claim.

The Assistant Collector held that the case was distinguishable from *Khub Ram v. Surat* (1) and that there was enough evidence to show that possession had passed. I think that this finding was probably correct, especially in the case of Bhagwana. This man even preferred an appeal to the Collector against the mutation of ownership decided in favour of plaintiff's predecessor. The Collector rejected that appeal some few months before his decision in the present case, namely, on the 7th of January 1921. In the case of Ausaf Hussain and Khurshed Hussain the evidence would have been stronger had Abid Hussain's signature been proved and had the Collector supported the Assistant Collector, I should not have interfered on revision. (Compare the decision of Sir John Maynard in Revenue Case No. 156 of 1919-20, on Collector Ambala's appeal case No. 42 of 1918.)

On the other hand, in the present case I am not prepared to upset the findings of the two appellate Courts on this point whether as a fact possession, formal or otherwise, had passed. I notice, however, that Commissioner has misinterpreted plaintiff's application of 1920 for *Waqaiyi gabza*. No such inference as he has drawn against plaintiff can be drawn from the application, which itself asserts symbolical possession. There is, however, another aspect of the case, which is raised inferentially in paragraph 11 of the application for revision and in the arguments of the counsel and also in paragraph 3 of the appeal to the Commissioner, namely, the application of S. 14 of the Tenancy Act. The Commissioner has given no decision on this point. A reference to S. 14 of Tenancy Act also now appears in the heading of all the plaints, but the words appear to have been added later, when it was thought expedient to urge this section before the Commissioner. The plaint is based on formal possession and in view of the necessarily formal character of that possession and the pronouncement of the Munsif on the two occasions of applications for execution, it is difficult to criticize plaintiff's action in relying on such supposed formal possessions, and naturally in such cases actual possession cannot be given by a civil Court. Before plaintiff could get actual possession, he would have to eject tenants under the Tenancy Act. The Commissioner does not seem to have realized this. On these grounds I do not think that an alternative claim under S. 14 is so inconsistent with the plaint as to render it improper to consider this ground, nor has this objection been advanced before me by respondents' counsel. Under S. 14 plaintiff's claim would be that he is entitled to dues as if he was in fact the landlord and as if defendants were his tenants. As regards the revenue (1) 20 P.R. 1917.

nue papers, in the proprietary column we have plaintiff's name and in the tenancy column the name of one or more of the defendants, but there is no entry of rent paid to plaintiff, and in fact the papers show that rent is not paid to the plaintiff. The presumptions raised are that the plaintiff has proprietary right, and that the persons entered in column of cultivation are in cultivating possession, but the papers give no presumption of tenancy. Thus we have distinct presumption of proprietary right. We also have the fact that decree exists in plaintiff's favour for possession as a mortgagee-landlord. This decree in effect recognises his status as mortgagee owner and his title to be put in possession. The decree does not create this status, but merely recognises the status. The revenue Courts are bound not to deprive persons of rights recognized by the civil Courts and the civil Courts have recognized plaintiff's status, and as long as that status is not nullified in some way, I consider that the revenue Courts should concede the logical sequence, namely, that plaintiff is entitled to claim dues under S. 14. It has been alleged before me that execution of the decree is time-barred. This is not the case, as far as I can see, limitation runs from the date of the final decree of the Chief Court which is dated the 7th September, 1917, and the claim was put in on the 9th of August 1920, so execution was not barred by time on that date. Plaintiff also applied for execution again on the 13th of August 1920 within three years of the Chief Court's order, so he appears to have another three years. Plaintiff on his allegations seems to be the person immediately entitled to the use and occupation of the land. *Ghuna Mal v. Ghanda Singh* (2). In that case plaintiffs claimed that they had a title by mortgage and that they had obtained *Dakhilkharij* and that defendants prevented them from showing. All these elements are present in the present case with the addition that plaintiff has obtained a decree from the civil Court. He should be none the worse off for having obtained a decree, even supposing he has not executed it effectively. *Thakar Das v. Kanhaya* (3) held that a decree-holder (in that case he had executed his decree) could claim dues under S. 14 for the period between the institution of his suit and his actually obtaining possession under the decree. The suit was originally instituted in a civil Court but on appeal the District Judge held that the suit was under S. 77 sub-section (3) (n) and referred it to the Chief Court under S. 100. The Chief Court held that it was a Revenue case, clearly considering S. 14. applicable. The Financial Commissioner held that the plaintiff was certainly the landlord for purposes of S. 14 and entitled to recover dues for the period in question. Now transfer of possession by means of execution could not have had retrospec

(2) 82 P. R. 1894.

(3) I P. R. 1893 (Rev)

tive effect. Hence the claim in this case to the benefit of S. 14 must have rested not on possession but on title already existing at the date of the institution of the suit and recognized by its decree. *Gobind Ram v. Nahi* (4) also supports the view that it is not necessary that the landlord should ever have had possession. *Gurdas v. Hassan*. (5) is also in favour of the plaintiff and incidentally shows that it is not the business of the revenue Courts to reopen matters already decided by competent civil Courts. The language used in the ruling appears, moreover, to imply that though the plaintiffs in that case had got a decree in 1895 entitling them to possession, they had not executed it. Still they were held entitled in 1901 under S. 14. *Mul Chand v. Mul Chand* (6) is also in plaintiff's favour. It reads "the case must be dealt with on the above-mentioned basis that by the decree of 1898 the plaintiff was put in the position of a landlord." For these reasons I think that plaintiff is entitled to a decree on the strength of S. 14.

As regards ruling *Khub Ram v. Surat* (1), I may observe that in that case the plaintiff's whole claim rested on the allegation that he had taken formal possession. The ruling would be applicable, supposing the plaintiff was now suing to eject respondents from the land, but he is not suing for this, but merely for certain dues, and it does not really matter whether he has obtained possession or not as long as the status given him by the decree subsists. I accept the application for revision and restore the orders of the Assistant Collector in all the cases. Parties to bear their own costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 36 of 1921-22. (Decided on 8-5-1922).

Casson, F.C.

AMAR SINGH

Appellant

Versus

HARNAM SINGH

Respondent.

Lambardar—creation of new post—existing Lambardar obnoxious—income from the village quite sufficient to support two.

Where the existing lambardar was most obnoxious to a large section of the village, who owned nearly $15\frac{1}{2}$ squares out of 42 squares and the revenue and abiana was quite sufficient to support two lambardars, appointment of a second Lambardar was held to be justified.

Appeal from the order of Commissioner of Multan Division,

(4) 4. P. R. 1901, Rev.

(5) 13 P. R. 1901, Rev.

(6) 6. P. R. 1905, Rev.

ORDER.

This case reveals continuous dissension in the village and refusal on the part of the Gils to recognize Harnam Singh as a suitable Lambardar to represent them. From time to time they have attempted to get a separate Lambardar for their own tribe, but without success until last year when Mr. Abbot approved the proposal of the Collector to appoint an extra Lambardar for the 15 squares held by Gils. An appeal was preferred against this order and in view of the fact that it appeared that the existing Lambardar had not been given an opportunity to represent this case before the Commissioner, my predecessor made over the appeal to the Commissioner for disposal with powers to pass a fresh order. Thereupon Col. Elliot disposed of it and decided that no additional Lambardar should be appointed, and it is against that order that the present appeal is made. It is manifest, I think, that the position must necessarily have become much more acute in consequence of the order passed by Mr. Abbot. The Gil Jats would have expected a hearing of that order to have at least succeeded in obtaining their desire and the disappointment in having to remain under Harnam Singh will be proportionately all the greater. The Commissioner's order is also based on incorrect data. He says that no increase has taken place in the land revenue or elsewhere to call for another Lambardar nor has the size of the Chak increased. As a matter of fact the revenue has increased as shown in Mr. Penny's order of the 27th January 1922, and is now estimated to be more than half as much again as it was in the year 1920-21 and the squares now amount to 42 against 24 when Harnam Singh was first appointed. The last order rejecting application for an additional Lambardar appears to have been passed in March 1911. The revenue was then Rs. 1,433 with an *abiana* of Rs. 4192. It is now likely to be Rs. 3,100 with an *abiana* which is at least Rs. 4,749 and may be more. This, however, is not the consideration, which should settle the matter. On administrative grounds, I consider that the position is impossible. Here we have a large section of the village nearly 15 squares out of 42 squares, to whom the existing Lambardar is most obnoxious. Efficient administration can hardly be expected under such circumstances and as the amount of the land revenue and *abiana* is quite sufficient to support two Lambardars, I see no reason why an extra Lambardar should not be appointed and the village placed on the same footing as nearly all other Chaks, namely, being provided with at least two Lambardars. I accept the appeal and restore the order passed by Mr. Abbot, *i.e.*, a second Lambardar will be appointed. It will be for the Collector to determine the person who is to be appointed.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 253 of 1920-21. (Decided on 2-8-22)

King, F. C.

HAR DAS

*Applicant**Versus*

LAL SINGH

Other side.

**Punjab Land Revenue Act, S. 37—death of occupancy tenant—
mutation should be in the name of the landlord.**

Where the last incumbent of an occupancy holding is proved to be dead, the land should be shown in the name of the landlord, that is to say that the right of occupancy should be deemed to be extinct.

Revision against the order of the Commissioner, Ambala Division.

ORDER (16th May, 1923.)

The question for decision was whether in the absence of Ram Chand, occupancy tenant, mutation should be effected in favour of his cousin Har Das, by adoption or whether the occupancy rights should be extinguished. The Assistant Collector decided in favour of extinction. The Collector decided in favour of Har Das. The Commissioner has restored the Assistant Collector's order.

While the appeal to the Commissioner was pending, the Collector pointed out that Ram Chand was still alive, and that he was not 30; his name should not be removed from the papers. The Commissioner refused to accept this view.

It seems to me that if Ram Chand is alive there is no reason why his name should be removed from the revenue papers. It is not for the Revenue Officer to go into the question whether Ram Chand has forfeited his rights or not. That is a question which a Court must decide. The Revenue Officer has only to decide whether or not Ram Chand is alive. If Ram Chand is alive, then there should be no mutation. If Ram Chand is dead, then the question arises whether the occupancy rights are extinguished or whether they pass to Har Das, the adopted son of Mst. Kasturi Ramji's widow. Notice must issue to both parties.

ORDER. (2nd August 1922.)

My order of the 16th May, 1922 will be read as a part of this order. The parties agreed in stating that Ram Chand is not alive and that he died about four years ago. It is obvious, therefore, that his name cannot appear in the records. I agree with the Commissioner in thinking that in default of Ram Chand's name the land should be shown in the name of the landlord, that is to say, that the right of occupancy should be deemed to be extinct. I see no reason to interfere. The petition is, therefore, dismissed.

Petition dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 94 of 1921-22. (Decided on 3-8-1922).

King, F. C.

LAKHMI CHAND and others

*Applicants**Versus*

KHAN MOHAMMAD and others

Other side.

(i) Punjab Tenancy Act, S. 9—lapse of time—no acquisition of
occupancy rights.

Held, that mere lapse of time does not confer a right of occupancy.

(ii) Practice—pleadings—plea raised at a late stage.

Where plea of non-joinder of parties was not raised in any of the pleas but was raised in the revision Court, held, that at such a late stage the point should be disallowed.

Revision from the order of Commissioner of Multan Division.

ORDER.

The points raised in this case are quite different from those raised in case No. 21 of 1921-22. I would not have issued notice to the respondent, if I had not been misled by the fact that the parties come from the same village, and the disputes in both cases are as to rights of occupancy. I entirely agree with what the Commissioner has written that mere lapse of time does not confer a right of occupancy, and I see no reason to interfere with the order of the Collector. The petition for revision is therefore rejected. The point raised by my predecessor that all the landlords have not been made plaintiffs has not been raised in any of the pleas, and I am not prepared to entertain it at this stage of the proceedings.

Petition rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue

No. 133 of 1921-1922. (Decided on 8. 8. 1922.)

Casson, F.C.

GULAM MUSTAFA

*Petitioner**Versus*

FAZAL DIN and others....

Other side.

Punjab Tenancy Act, S. 84 (5)—ignoring a previous judgment
operating as res judicata between the parties is a material irregularity
justifying interference on revision.

Held, that the Collector and Commissioner committed a material irregularity in ignoring a previous decision between the representatives-in-interest of the

parties and the Financial Commissioner was authorized to interfere with the decision in revision under S. 84, cl (5) of the Act.

Revision from the order of the Commissioner of Lahore Division.

ORDER

The facts are stated fully in the Commissioner's order dated 22nd February, 1922. Mr. Mohsan Shah who appears for the respondents, admits before me that the case of 1895 was between the representatives-in-interest of the same parties and that therefore the decision arrived at in that case is *res judicata* far as the present case is concerned. It has been decided in that former case that the tenant, Ghulam Shah had occupancy rights under S. 6 of the Tenancy Act. The Collector and the Commissioner do not appear to have realised the fact that this judgment was *res judicata* and barred a further investigation so far as they were concerned. It seems to me therefore that they have committed a material irregularity and that I am authorised to interfere under S. 84, clause 5 of the Tenancy Act.

The only point now in dispute is as to whether Mehr Shah occupied the land. Mr. Mohsan Shah says that there is no evidence to this effect and that it is a mere conjecture to say that he did so. I do not agree. I think that the judgment of 1895 clearly establishes that Mehr Shah was in occupation of the land. If it is admitted that Mehr Shah was in occupation of the land and that his descendant, Ghulam Shah, had occupancy rights under S. 6, it follows that the present petitioner, Ghulam Mustafa who inherits his rights through Budhe Shah, the son of Mehr Shah, has occupancy rights under S. 6. That being so, he cannot be ejected from the land. I do not agree with the Commissioner in the statement that Ghulam Shah's rights were limited to his lifetime. Doubtless that is how they were recorded in the revenue papers, but in spite of that record his rights were stronger than they were recorded to be. It is not clear why on Mehr Shah's death Budhe Shah and Ghulam Shah did not jointly succeed to their father's inheritance. Probably the fact that one man only was required to look after the shrine is the reason why both Budhe Shah and Ghulam Shah were not recorded as occupancy tenants of the land. However that may be I am quite convinced that Mehr Shah was the original occupant and that Ghulam Mustafa as the descendant is entitled to occupancy rights under S. 6. On this ground I accept the petition and restore the order of the first Court.

Petition accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 2 of 1922-23 (Decided on 6-11-1922),

King, F.C.

JIWAN son of MOHAMMAD

... ..

*Applicant**Versus*

THE CROWN

*Other side.***Punjab Land Revenue Act, S. 37—Entry as to caste in the Revenue Records—correction thereof.**

Held, that no change should be made in the existing Revenue record merely because an applicant is believed to have proved that an entry is wrong. Such action should only be taken when a definite cause of action has arisen or an applicant has obtained a declaratory decree in a regular suit to that effect.

Revision from the order of the Collector of Attock District.

ORDER

King, F.C.—This is an application by one Jiwan praying to be shown as an Awan in the Revenue papers. The applicant has not put in a copy of the Revenue papers to show in what capacity he is entered in the Revenue papers at all or even to show what his caste is as recorded in these papers. I am of opinion that this is not a case in which the Commissioner or any Revenue Officers below him should take action of a general nature with a view to some future occasion. It is probable that the object of the applicant, Jiwan, is to be able to acquire land which he is not able to do now from an agriculturist. It is possible also that being married to the sister of an Awan, his wife's family wish that their sister's husband should be shown to be of a caste suitable for marriage with them. Whatever the cause of the application, I am quite sure that it is not one on which, as it stands, the Collector should have given a decision altering the caste or declaring that the caste of the applicant was other than it is probably supposed to be. These cases should only be taken up when there is a definite cause of action. For example, supposing that the applicant wishes to acquire from an agriculturist a definite piece of land and the question has definitely arisen whether he can make the acquisition because he is not himself recorded as the member of an agricultural tribe then the Revenue Officer must reach a definite decision. I am averse from making any change in the existing Revenue records, merely because the applicant is believed to have proved that the entry is wrong. The only satisfactory proof of a wrong entry will be put forward in the course of a regular suit ending in a decree and unless the applicant is prepared to take action by way of a regular suit and unless he obtains a declaratory decree, I do not think that any change should be made. For these reasons I am of opinion that the late Commissioner of Rawalpindi, Mr. Kitchin, came to a right decision in refusing to allow any change, and I think the Collector of Attock has acted rightly in following that decision. I, therefore, refuse to interfere with the Collector's order. The papers will be returned to the Commissioner of Rawalpindi with a copy of this order.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 21 of 1921-22. (Decided on 26-3-1922)

King, F.C.

AYA RAM and others

Applicants

Versus

ARSLA KHAN and others

Other side.

Punjab Tenancy Act—S. 84 (5)—Substantial justice done—no interference on revision.

Where substantial justice has been done there is no ground for interference on revision.

Revision from the order of the Commissioner, Rawalpindi Division.

ORDER.

Casson, F.C. (26-3 22).—The question involved in this case is one which has arisen from time to time regarding certain villages of Isa Khel Tehsil and this is the second case from this particular village Sultan Khel. The position so far reached cannot be described as satisfactory. In 1890 there was a case from village Kalur and the question involved being, I understand, the same as in the present case, at any rate the validity of an entry in the record of rights regarding certain rights of occupancy tenants or *Munjhamari* tenants to alienate their occupancy rights on their *Munjhamari* rights without the sanction of the landlords was involved. The Commissioner seems to have decided that there was a custom which authorised such alienation. The case evidently went to the Financial Commissioner on revision and was rejected. Then, in 1899, a similar case started regarding the same village and came before Sir Charles Tupper, who remanded it for fresh decision on certain issues and it was decided on those issues and the Commissioner held that as the case was between the same parties as in 1890 it was *res judicata*, but he sent the case up to the Financial Commissioner to see with reference to the question whether it was necessary to review the finding of 1890. This was the Financial Commissioner's case No. 20 of 1900-21. An enquiry was made to ascertain whether other villages had similar entries as those given in the *wajib-ul-arz* partly because the entry in the *wajib-ul-arz* was expressed in very ambiguous language. The final result was that the Financial Commissioner held that some 25 villages contained similar entries and that they undoubtedly were meant to lay down that occupancy tenants could alienate their holdings in these villages without the consent of the landlord and he gave a curious finding to the effect that a general custom exists by which occupancy tenants under S. 8 of the Tenancy Act are empowered to alienate their holdings without the consent of the landlord and he explained that the reason for this was that they had, as a rule, invested

capital in the improvement of their holdings to a much larger extent than would be usual in the Punjab proper. He agreed with the Commissioner that the case was *res judicata* owing to proceedings of 1890 and remarked that the enquiry in the case before him was only necessary to show whether the case of 1890 required review and that the result was that no such review was necessary and that the previous case was decided in accordance with the custom of the vicinity and following the only intelligible interpretation that could be put upon the entries in the *wajib-ul-arz* of this and other villages. He therefore rejected the application for revision of the Commissioner's order. This case is peculiar and it might be taken to imply that the existence of a custom could override the provisions of the Tenancy Act. The next case is Financial Commissioner's revision case No. 159 of 1909-10 of village Sultan Khel, the same village as we are now concerned with. The Collector reluctantly accepted the appeal from the Assistant Collector's order, as he held himself bound to follow the decision of the Financial Commissioner in 1901 and thus, though he evidently did not agree with that decision, he himself felt bound to dismiss the claims of the landlords to set aside the alienation and obtain possession of the land. The Commissioner held that the Financial Commissioner had not given a clear finding to the effect that custom could be allowed to abrogate the provisions of S. 56 and 60 of the Tenancy Act and accepted the further appeal and set aside the transfer. He based his decision on S. 112 read with S. 111 of the Tenancy Act but does not appear to have considered the application of S. 111 taken by itself. The Financial Commissioner on revision agreed with the Commissioner and held that the entries having been made after 1871 cannot be classified as agreements by virtue of S. 112. Therefore he held that the case was governed by Ss. 56 and 60 of the Tenancy Act and the mortgage was clearly voidable at the instance of landlord. He further held that it was not the intention of the Financial Commissioner in the Kalur case, No. 20 of 1900-01, to lay it down that an entry in the administration paper of a village regarding a custom of alienation overrides the provisions of Ss. 56 and 60 and that such a ruling would have been clearly contrary to law, and if it had been placed on record it would have been necessary to overrule it. Here again there was no discussion in the Financial Commissioner's order as to the possibility of the entry being an agreement within the meaning of S. 111 independently of S. 112. Finally we have a Civil Judgment No. 63 of 1918. The relevant words in this finding are :—

It has been found as a fact by both Courts that the occupancy tenants in the village in which the lands in suit are situate have an unrestricted right of alienation. This finding is now attacked by the Counsel for the respondents, but it is based upon an agreement in the *wajib-ul-arz* of the village and that agreement appears to be one which

could be enforced under S. 111 of the Tenancy Act despite the provisions of S. 56 of the same Act. The finding therefore contravenes no provision of law and it is one which must be accepted.

I should have remarked regarding the case No. 20 of 1900-01 that the landlord applied for review of Financial Commissioner's order. This application came before Sir Charles Tupper and was rejected by a brief order. Sir Charles Tupper thus appears to have affirmed the order of Mr. Clark, Officiating Financial Commissioner who had originally disposed of the case, but it is impossible to say what reasons led him to reject the application for review. The finding in 63 P. R. of 1918 does not discuss in detail whether the entry could rightly be regarded as an agreement under S. 111 and I think cannot be taken as laying down anything more than the proposition that if the entry is regarded as an agreement under S. 111 then that agreement does override the provisions of S. 56. The above inference, at any rate, can be drawn from the ruling and to this extent justifies further examination of the point, which seems to have been overlooked in the decision of 1910 as to the applicability of S. 111 taken by itself. I fully agree that there is absolutely nothing in law to prevent such an agreement operating and therefore the whole point for consideration seems to me in all these cases to be whether the entry is an agreement within the meaning of S. 111. It appears to me that entry of 1878 is not relevant. It was not made before 1871 and does not *proprio vigore* constitute an agreement within the meaning of S. 111 by virtue of S. 112. Apart from this, it has been ruled in 16 P. R. 1915, following many previous rulings, that, in the absence of an express intention to the contrary, agreements recorded in a settlement record are not intended to take effect after the expiry of the settlement. If this rule is followed, the defendant must have his case solely on the entry in the 1907 settlement and he must prove that the entry embodies the terms of an agreement arrived at between the parties. In P. R. 16 of 1915, it is laid down that the mere signature at the end of a document containing many clauses with respect to various matters relating to rural economy cannot *per se* be regarded as sufficient evidence to prove the fact that the attention of the parties was directed to the rules of succession at variance with the statutory rules, contained, with other matters, in one of its clauses, and that these rules were the result of their mutual consent. It is further remarked in the ruling that if the entry were a mere repetition of the previous entry and the persons concerned were not questioned as to whether they consented to accept it as a binding agreement, it could not obviously satisfy the requirements of S. 111 of the Tenancy Act and in the case before them the Hon'ble Judges gave some special reasons for thinking that the entry was a mere repetition and that there was nothing to show that the attention of the parties had been directed to it. It is noticeable that in that case the entry was signed by

both the landlords and the tenants. The mere fact of signature by the two parties will not of itself be sufficient to establish that the entry amounts to an agreement. Revenue Judgment No. 10 of 1901 is, however more to the point. In that case the record of rights in 1880 contained an entry that the tenants had agreed to give up their occupancy rights and after he had carefully examined the attestation papers in all stages, Sir Charles Tupper came to the conclusion that he had before him a case not of a mere voluntary admission to an agreement, that the landlords as well as the tenants had taken part in the proceedings but that great care was exercised to see that the tenants knew what they were about. He goes on to say that mere entry in the record of rights does not constitute an agreement. There must be an actual agreement and Revenue Courts must satisfy themselves of this. The present case is quite distinct from 3 P.R. 1868 Revenue. In that case the landlords tried to make use of an entry favourable to themselves against the tenants. The document was signed only by the landlords and was not even a voluntary admission by the tenants but in the present case the tenants are trying to make use of a document signed by the landlords. It seems improbable that the landlords would ever have signed such a document containing the clause in question unless they had agreed to abide by it. The entry in itself is inherently a natural one in view of the facts elucidated as to these villages in Financial Commissioner's case No. 20 of 1900-01, namely, the heavy expense of Manjhamari. I am inclined to the view that the landlords knew perfectly well what they were doing and that was an agreement and this is all the more probable because the settlement took place before the Financial Commissioner's decision in case 59 of 1909-10 and after the decision of 1890 and this is further borne out by the view taken by the Civil Courts in P.R. 63 of 1918. It is highly desirable on general grounds to reconcile the various decisions on this matter of these entries in the *wajib-ul-arz* of these villages and it remains to examine the attestation papers thoroughly in order to see what there is to show that the entry embodies an agreement.

The settlement report of 1872-78 paras 139 to 144 describes the origin of the tenures in Isa Khel Tehsil. In para 146 relating to tenants we find "most of these holdings under S. 8 in the Isa Khel and Mianwali Tehsils are found in the *kacha* and derive their status from having broken up jungle waste at a time when tenants were less easy to obtain than now.In addition to the privileges secured them under the Act, some have also the right to alienate their holdings. It is evident from a perusal of these paragraphs that the breaking up of waste whether in the uplands or the *kacha* was not a particularly safe undertaking. In para. 24 of the Assessment Report of the Mianwali and Isa Khel Tehsils (1907) "There are Butemar and Manjhemar tenants who have cleared the wastes or have built embankments or levelled the land and cannot be ejected without pay-

ment of compensation and can sell or mortgage their rights."

The large proportion of land held by occupancy tenants is noticeable. In 1878 it was 25 per cent of the whole cultivated area and in 1907, 20%. I admit this application for revision, both parties to be sent for, also the record of the civil case which resulted in P.R. 63 of 1918 also the file of the attestation of the *wajib-ul-arz* of the 1907 Settlement.

ORDER.

Casson F.C. (6-5-22)—Through a change of *ahlmad* the order that the civil file above referred to should be sent for has not been carried out. This has only come to notice this afternoon and it is impossible to get the file from Mianwali by Monday. The case is an important one and I think that it should not be decided without seeing the civil file. The case is fixed for the 8th instant. It must be postponed. A fresh date will be fixed.

ORDER.

King, F. C. (4-8-22)—The preliminary objection has been taken by Mr. Bhagat, who appears for the respondents to the effect that under S. 84, sub-section 5 of the Tenancy Act the power of this Court is limited strictly by S. 115 of the Civil Procedure Code. I have heard Mr. Bhagat at length and Pandit Shiv Narain in reply. I have also considered the order recorded by my predecessor, Mr. Casson. I am of opinion that in this case substantial justice has been done and that no good will result by adding another ruling to the somewhat conflicting rulings which already exist as to the rights of occupancy tenants under S. 8 in this village of Sultan Khel. I think that the Collector and Commissioner have acted rightly in following the ruling of my predecessor Mr. (now Sir) John Maynard in Revenue Court Case No. 159 of 1909-10 which dealt with a precisely similar set of circumstances. That being so I refuse to interfere under S. 84 sub-section 5 of Tenancy Act.

Interference declined.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

No. 11 of 1921-22. (Decided on 28-4-1922.)

Revenue.

Casson, F. C.

GURU SARDOOL SINGH

Versus

Appellant

SUNDAR SINGH and others

Respondents.

Punjab Tenancy Act, Ss. 24 and 25—enhancement of rent.

Held, that under proper circumstances the Court may enhance the rent of an occupancy tenant to such an amount as it considers fair and equitable, on the understanding that the landowner would not bring a similar suit at least for a period of ten years.

Appeal against the order of the Commissioner of Jullundur Division.

ORDER.

This order should be read in continuation of my order dated the 27th of March 1922, which should be considered as a part of this order.

The report asked for from the district has now arrived together with statements required. The report shows that I somewhat misunderstood the facts of the case. It was only for the settlement period 1853 to 1885 that the rent of the village was entered as lump sum. Thereafter it has varied. In the settlement of 1853, the total of revenue and cesses was Rs. 1,457, in 1885 this rose to Rs. 1474 and in the last settlement to Rs. 1731. The figures given in the Assistant Collector's order of the 17th January would appear to be incorrect. During the 1st period, the rent, a lump sum of Rs. 1800, was bached over the whole village and on occupancy and non-occupancy tenants alike at the rate of Rs. 2/9/- per bigha in case of *chahi* land and Rs. 1/8/1⁷/₈ per bigha in case of *barani*. The sum total of the rents rose in 1885 to Rs. 2006 and in 1914 to Rs. 2331. The rent of 1853 as compared with the revenue of 1882 gave an average *malikana* of $\cdot 74/6$. In 1885 the average *malikana* has arisen to $\cdot 9/$ - and in 1914 it still works out at $\cdot 9/$ - per rupee on revenue. On the other hand the rent of this particular holding has varied as follows:—

1853	$\cdot 74/$ - in the rupee.
1885	$\cdot 9/2$ Do.
1914-15	$\cdot 74/0$ Do.

The reason why the figures of the rent of this holding differ from those originally put on the file is explained in the report of the Revenue Assistant, dated the 24th of April, 1922, which should be attached to this judgment, and for the purposes of this suit the statement marked C, which was originally on the file, appears to be accurate only for a portion of the holding now in dispute and the rents which are now being paid on that holding and rents which respondent has been paying from time to time on the varying quantity of land held by him. Statement E is the more useful and shows that though he is now paying 0-4-0 on the average he was actually paying in 1885, 0-9-2. It seems unreasonable therefore that the enhancement should be confined to 0-8-0 seeing that he was paying more than 0-8-0, 35 years ago, and thus continued to pay that up till 1914. The statement D showing the average *malikana* paid by tenants throughout the village shows that this rent has amounted since 1885 to 0-9-0 in the rupee. It is true that this takes account of a small number of non-occupancy tenants, but both parties admit that non-occupancy tenants only cultivate 1/12th of the area, so that their presence does not seriously affect the question. For this reason I think it is safe to take as much as 0-10-0 and it may be hoped that perhaps the landowner will not bring a suit in 10 years, time for a further increase, as he would certainly do if the rent is fixed at 0-8-0 in the rupee. I accept the appeal and fix the rent at 0-10-0 in the rupee.

Appeal accepted.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1923.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 2 of 1922-23. (Decided on 10-3-1923.)

Abbut, F. C.

NAWAB and others

Appellants

Versus

MST. RABIA BIBI

Respondent.

Punjab Colonization of Govt. Lands Act, Ss. 20, 21 - female tenant holding till remarriage - land reverts to landlord - succession - P. T. Act, S. 59.

Mst. R. B. succeeded to the tenancy until re-marriage, when the unamended Act was yet in force. Held, that on her remarriage the land reverts to its landlord, namely, the Government, under P. T. Act, S. 59. Held further, that as the allotment to one Mst. H. R. was made because she was widow of one A. D., it could be presumed to have been made because of A. D's services. The Government Succession, therefore, went to the male agnates of A. D.

Appeal from the order of the Commissioner of Multan.

ORDER.

In this case question arises as to what must be considered to have happened as regards this half square on the remarriage of Rasul Bibi, which occurred during the period when the unamended Colonization of Government Lands Punjab Act, 1912 was in force. Under S. 20, Rasul Bibi succeeded until re-marriage. Section 21 does not provide for the case of a tenant re-marrying. We are thrown back on S. 59 of the Punjab Tenancy Act, and under the proviso of that section as the common ancestor did not occupy the land, it must be held that the land reverted to its landlord, that is to say, to Government. The allotment to Hayat Bibi, although apparently made by the Tahsildar, was not contested by anybody and must, I think, now be confirmed and held to be a first allotment of this tenancy, in which case S. 21 (a)

of the Amended Act comes into force; and, as no successor has been nominated by the Collector from the issue of Hayat Bibi in respect of this half square, succession devolves on the male agnates of the person on account of whose services the tenancy was allotted. In this case, the tenancy was allotted to Hayat Bibi, because, she was the widow of Ala Dad, a tenant of Government and, I think, it can be fairly said that it was on account of Ala Dad's services that the grant was allotted to her, Succession, therefore goes to the male agnates of Ala Dad, that is to say, to Mehr Dad, Khuda Dad and the heirs of Fazal Din. For these reasons, I accept the appeal and restore the order of the Settlement Officer, ordering mutation of this half square in the sense above described.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenus.

No. 14 of 1922-23. (Decided on 5-4-1923).

King, F. C.

AKHTAR ALI

Appellant

Versus

LAIK RAM

Respondent.

Sufedposh—appointment—candidature sanctioned by Commissioner—applicant not a Lambardar.

Where an applicant's candidature for the appointment of Sufedposh is sanctioned by the Commissioner, he is in all respects acting on the same footing as if he were a Lambardar, and the fact that he is not a Lambardar should not count against him, when it comes to making a selection, for the appointment of Sufedposh. The initial defect in an applicant for Sufedposh of not being a landowner in a Zail is cured by subsequent acquisition of land therein.

Appeal from the order of Commissioner of Ambala Division.

ORDER.

This order will dispose of appeal, No. 14 of 1922-23, and revision application, No. 106 of 1922-23. In both cases, Akhtar Ali Khan is the petitioner before me. In the appeal, Akhtar Ali Khan appealed against an order of the Commissioner directing the Deputy Commissioner to make a further enquiry into this case, and in the petition for revision, Akhtar Ali Khan has applied against an order of the Commissioner confirming an order of the Deputy Commissioner appointing Ramji Lal as Sufedposh. Akhtar Ali Khan is not a Lambardar but his candidature for the appointment of Sufedposh has been sanctioned by the Commissioner. Therefore, in all respects, he is on exactly the same footing as if he were a Lambardar, and the fact that he is not a Lambardar, should not count against him when it comes to making a selection for the appointment of Sufedposh. A more serious and the fact that he is not a Lambardar.

objection against Akhtar Ali Khan's appointment is the allegation that he did not own land and could not, therefore, be described as a landowner in the Zail. This defect, if it was true originally' has been cured subsequently, because, Akhtar Ali Khan now owns land in this Zail. The Deputy Commissioner has appointed Ramji Lal as Sufedposh on the conditional recommendation of Rai Bahadur Mukand Lal, Honorary Magistrate. The actual report of Rai Bahadur Mukand Lal stated that if, Akhtar Ali Khan was to be appointed, then Ramji Lal was a suitable candidate. The Deputy Commissioner appears to have thought that the Commissioner's order, directing a further enquiry, precluded him from again considering the claims of Akhtar Ali. As a matter of fact, Akhtar Ali Khan had by that time lodged an appeal in this Court, protesting against the remand to the Deputy Commissioner. I am of opinion that there is no reason why the Deputy Commissioner's original order should be varied. The Deputy Commissioner does not appear to want it to be varied and it is obvious that he would not have varied it if he had not been directed to make a further enquiry. Akhtar Ali Khan seems to be a suitable candidate and the mere fact that both he and the Zaildar belong to the same estate is not a good reason for turning him out of the appointment.

I accept Akhtar Ali Khan's appeal, No. 14, and cancel the Commissioner's order. The effect of this is to restore the order of the Deputy Commissioner, appointing Akhtar Ali Khan as Sufedpesh. Akhtar Ali Khan's petition for revision is, therefore, also accepted, because, it is obvious that if Akhtar Ali Khan has succeeded as against Laik Ram, there was no vacancy to which Ramji Lal could be appointed. The parties will bear their own costs throughout.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 28 of 1922-23. (Decided on 21-4-1923).

King, F. C.

NANAK SINGH

Applicant

Versus

BHOLA SINGH

Respondent.

Sufedposh—appointment by Collector—interference by Commissioner.

Held, that the appointment, made by a Collector is not to be upset by a Commissioner, merely because, he himself, for good reasons, whatever they may be, would have chosen some other man. Where, therefore, it was established by the record that the respondent was better than the appellant and although not a Lambardar, the Commissioner had chosen him as a Sufedposh; the mere fact that he was not appointed by the Collector could not stand in his way of being appointed a Sufedposh.

Appeal from the order of the Commissioner of Jullundur Division.
ORDER.

The chief fact against Bhola Singh is that he was not appointed as Sufedposh by the Collector. On the record, as it stands, I think, it is established that he is the better of the two candidates. It is true that he is not a Lambardar, but that fact is condoned by the Commissioner's choosing him as a Sufedposh and by implication approving his candidature for that appointment. Bhola Singh has considerably more land than Nanak Singh. His personal services have been far greater than those of Nanak Singh. On the other hand, Nanak Singh has the great advantage of having been appointed by the Collector and of having had his son enlisted into the army during the Great War. Nanak Singh's father's services have been very considerable but although the fact of these services is to be taken into consideration, it is not to be regarded as a ruling fact in making the appointment. If I had to judge between the two men, I would myself have had no hesitation in choosing Bhola Singh. The only difficulty, I have in dealing with the case, is that the ruling of *Attar Singh v. Ganga Singh* (1) at first sight seems to preclude the interference of the Commissioner in a case of this description. The ruling, which is based on previous rulings, distinctly lays down the principle that the Deputy Commissioner's selection is not to be interfered with except for convincing reasons. It is not stated what convincing reasons are. We may take it that it is intended by these words that the appointment, made by a Collector, is not to be upset by a Commissioner merely because he himself, for good reasons, whatever they may be, would have chosen some other man. At the same time, if a Collector has taken such an extreme view of certain factors as to make him come to a wrong decision as to the person who should be appointed to fill such a vacancy, I think, it is open to the Commissioner to correct that mistake. In the case now before me, it seems to me that the Collector has attached undue weight to the fact that Nanak Singh has had his son enlisted in the army. It was quite right for the Collector to attach great weight to that fact and I also am prepared to attach every importance to it; but, having regard to all the circumstances in favour of Bhola Singh, I think, it must be admitted that the Collector has over-emphasized the fact that Nanak Singh's son was enlisted at a time of great danger and crisis. I have no doubt Nanak Singh did his share towards including his son to enlist but the fact must also be remembered that Nanak Singh's father, Punjab Singh, was alive at that time and, being a Sufedposh and a man of influence, must have also exercised his influence. There is also the fact of the boy's own nature, to which credit must be given. Altogether I think that the Collector has attached too great weight to this fact. On the other hand, Bhola Singh has many claims to the appointment. The Commissioner has not indicated all of these, but among them are his personal character, abilities and far larger area of land which he holds. There is also the fact

(1) 1 P. R. 1913 (Rev.).

mentioned by the Commissioner that Bhola Singh was deprived of the Sufedposhi for no fault of his own and by chance, although, at the time he was deprived of the Sufedposhi, he was thought to be the better candidate for that appointment. Having regard to all the facts in this case, I have no hesitation in deciding that the Commissioner's order is correct and I dismiss this appeal,

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 29 of 1921-22, (Decided on 4-5-1923.)

King, F. C.

DANI and others

Appellants

Versus

CHHAJU KHAN and others

Respondents.

Punjab Tenancy Act, S. 72 - Improvements - estimate of.

Held, that the *Naqsha Chahat* is a more correct indication of the value of the wells, sunk by the tenant, rather than the report of the District Engineer and the Courts ought to accept a statement as to cost of each well contained in the *Naqsha Chahat*, when estimating the value of compensation to be paid to the tenant on ejection.

Appeal from the order of the Commissioner of Jullundar Division.

ORDER. (6. 4. 23)

The whole question in this case is about the amount of compensation due to the tenants on account of the wells made by them. The trial Court appointed the District Engineer as commission with the consent of both parties and it has based its award of compensation on the report of that commission. The Commissioner has preferred the statement of the value of the wells given in the *Naqsha Chahat*. *Prima facie*, I think, the Commissioner is right and I myself would have preferred the value given in the *Naqsha Chahat* to the estimated value made by the District Engineer. It has been urged before me in this appeal, however, that the matter having been referred to the commission for decision, the finding of the commission must be accepted. On this point I should like to hear what the other party has to say. It must be further pointed out that, in two cases, that of Ram Singhwala and of Nameanwala, there appears to be a mistake in the calculation. The full value of Ram Singhwala should be Rs. 400 instead of Rs. 300 with the resulting balance of compensation due of Rs. 160. Of Nameanwala the price is correctly stated to be Rs. 400, but compensation has been allowed for five years only instead of for six years so that the amount allowed is Rs. 100 instead of Rs. 120. These arithmetical mistakes must be

corrected. As to the other important point of issue between the parties, I agree with the Commissioner in thinking that the full amount of compensation which would be payable to an ejected tenant, should not be paid to a tenant who has rights of occupancy and who will continue in occupation of the land. The Commissioner has fixed the proportion of compensation due to the occupancy tenant, whose rent has been enhanced at $\frac{1}{3}$ rd of what would be payable to a tenant who is to be ejected. There is no ground in the records for this assumption, but we may accept it and I am not prepared to vary it. In the result the only point in which I require to hear the respondents is as to whether the finding of the Commissioner shall prevail against the *Naqsha Chahat* and as to whether, in these two cases, there has been a miscalculation. Notice to issue to the respondents for some day in May before the Office moves up to Simla.

ORDER. (4. 5. 23)

My order of 6th April, 1923, will be read as part of this judgment I said in that order that the trial Court had appointed the District Engineer as commission with the consent of both parties. It has been pointed out to me by the Vakil for the respondent Pandit Bishan Narain, that this is incorrect and that his clients although they did not object to the appointment of the commission, declined to pay towards its cost and did not think that the appointment of a commission was necessary. This further strengthens the argument against accepting the report of the commission. The Vakill for the respondent admits that the Commissioner (*i. e.* the lower Appellate Court) has made a mistake in the arithmetical calculation and that the figures are those given in my order of the 6th of April. The effect of applying those figures is to increase the total amount, payable as compensation according to the calculations made by the Commissioner, from Rs. 270 to Rs. 295, the variations being that the compensation for Ram Singhwala will be Rs. 53-5-4, instead of Rs. 35 and for the Nameanwala Rs. 40 instead of Rs. 33-5-4 thus making total Rs. 295. After hearing both Advocates, I feel strongly that the lower Appellate Court was right to accept the *Naqsha chahat*, as a correct indication of the value of the wells, rather than the report of the commission (the District Engineer). I do not for one moment wish to disparage that report in any way. It appears to have been carefully prepared according to the rules of Engineering Department of District Boards, but it is a well-known fact that these estimates prepared by Engineers are frequently incorrect, and I would prefer to accept a statement as to the cost of each well made at a time, when there was no dispute as to what the cost was. Such a statement is contained in the *Naqsha chahat*. Where the *Naqsha chahat* is silent, I prefer an estimate of the lower Appellate Court to that of the District Engineer. It seems to me to be more in accordance with the

statements of cost contained in the *Naqsha chahat* with respect to the other wells. The two wells, where the *Naqsha chahat* is silent, are Dunnewala, and Gurewala. For Dunnewala, the District Engineer estimated the cost at Rs. 610 and the lower Appellate Court has accepted Rs. 500, and for Gurewala the lower Appellate Court has accepted Rs. 200 against an estimate of Rs. 214. I accept the appeal and vary the order as detailed above. I am of opinion that this appeal was really not necessary and that on the whole the respondent has been successful in this Court. I therefore, direct that the appellant shall pay all the costs of this appeal. The Commissioner's orders as to costs in the lower Courts will be carried out and are not interfered with.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 62 of 1922-23. (Decided on 31-10-1923.)

King, F. C.

KOT DEFFADAR AHMAD KHAN

Appellant

Versus

NAWAB KHAN

Respondant.

Zaildar—appointment—selection of Collector—interference of Commissioner.

Held, although the Collector may not be right in his selection of a person as a Zaildar, the mere fact that the Collector has not chosen the better man, is not a good reason for the Commissioner to interfere. After all, the Collector is the man on the spot and the Collector must be trusted to choose the man whom he thinks the best (and in these matters opinion only counts) to perform the important duties of a Zaildar.

Appeal from the order of Commissioner of Multan Division.

ORDER.

I think, this is one of those cases, in which the Commissioner should not have interfered with the order of the Collector. The Collector may not have been right in his selection, but the mere fact that the Collector has not chosen the better man is not a good reason for the Commissioner to interfere. After all, the Collector is the man on the spot and the Collector must be trusted to choose the man whom he thinks the best (and in these matters opinion only counts) to perform the important duties of a Zaildar. In this particular case, the Collector has thought it right to promote the man, who was a Sufedposh to be a Zaildar and I think that he acted rightly in making this promotion. It often happens that a man is appointed to be a Sufedposh and has to work hard in that appointment, and, because he has grown old in government service, he is subsequently

deprived of the more highly prized appointment of Zaildar which becomes vacant subsequently. In order to avoid this state of things it has always been my custom to insist, as far as possible, on the promotion of existing Sufedposhes and, unless there is anything in the character of a Sufedposh which would preclude his appointment, I would undoubtedly promote a man rather than bring in one from outside. In this case, moreover, I think that the arguments for and against are on the whole so evenly balanced that, even if Ahmad Khan had not been a Sufed Posh, his claims to be appointed Zaildar would have been considerable. Admitting the fact that he is already a Sufedposh, I think, his claims are irresistible. I therefore, accept the appeal and appoint Ahmad Khan to be a Zaildar, that is to say, I restore the order of the Collector. The costs will be paid by Nawab Khan. I have this to note further that although Ahmad Khan is Zaildar and although he will be allowed to ask for the appointment as a Sarbarah to help him with his work, that does not mean that the Sarbarah will establish any claim or title to succeed his father on the latter's demise, any more than the fact that Nawab Khan was a substitute for his father gave Nawab Khan any claim.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue,

No. 121 of 1922-23. (Decided on 30-10-1923).

King, F. C.

FARIDA

Applicant

Versus

SHAM SINGH and others

Otherside.

Punjab Tenancy Act, S. 84—Appeal barred by limitation—case heard on merits—material irregularity—revision.

Where an appeal was barred by limitation and this fact was in the knowledge of the Commissioner, but nevertheless he decided the appeal on merits, held, that it amounted to a material irregularity and that the case was fit to be interfered on revision. 20 All. 73, 39 Cal. 473 and 3 Pat. L. J. 376 distinguished 29 I.C. 476 referred to.

Revision from the order of the Commissioner of Jullundur.
ORDER.

A very nice question of law has been raised by this petition. It is contended by the petitioner that the Commissioner has committed a material irregularity in not dismissing the appeal on the ground that it was barred by limitation. The question is whether that contention can be upheld. In the case of *Sundar Singh v. Doru Shankar*, (1) it was decided that a wrong decision on the question whether a proceeding was bar-

(1) 20 All. 78.

red by limitation was not a good ground for revision. In the case of *Ram Gopal Jhoonjhoonwala v. Johar Mall Khemka* (2) there was a similar decision and so also in the case of *Jhoti Lal v. Ganouri Sahu* (3). Now all these three cases can be distinguished from the contention in the present petition in this way. In all of them the question whether a suit or proceeding was or was not barred by limitation was before the Judge and in each case he decided that the case was not barred by limitation. In the petition with which I am now dealing there was no question as to limitation before the Commissioner, because the Commissioner on the fact has found, as he was bound to find, that the appeal before him was barred by limitation. Nevertheless, although he has found that it was barred by limitation, he has admitted it and he has proceeded to decide the appeal on the merits. I am very doubtful whether this action of the Commissioner in admitting an appeal which was barred by limitation and which was known to be barred by limitation cannot be said to be an irregular exercise of jurisdiction or a material irregularity within the meaning of S. 115 clause (c) of the Civil Procedure Code. I should like to hear arguments on both sides. Issue notice to the respondent and to the petitioner, and inform the petitioner that the petition has been admitted for hearing.

ORDER (30-10-28)

My order of the 7th August, 1923. will be read as part of this order. The Vakil for the petitioner has drawn my attention to the case of *Tari Sankar Ghose v. Shaikh Nasir-ud-Din* and others. (4) There the question, I have raised in my order of the 7th August has been raised and answered, and the doubt I had, has been confirmed. The Commissioner undoubtedly committed a material irregularity in hearing the appeal after the period of limitation had elapsed. That being so I have no hesitation in interfering with the Commissioner's order. I accept this application for revision, cancel the order of the Commissioner and restore that of the Collector. The landlords (plaintiffs) will pay the costs throughout.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 164 of 1922-23. (Decided on 31-10-1923).

King, F. C.

MOHAMMAD DIN

*Applicant**Versus*

JALAL-UD-DIN

Otherside.

(2) 39 Cal. 473=15 I. C. 547

(3) 3 Pat. L. J. 376=46 I.C. 176.

(4) 29 I. C. 476.

Lambardar-succession—right of heir—appointment of—hereditary rights.

Held, that in the absence of a defect, a person descended from the paternal great grandfather of the last incumbent of the post of Lambardar should be appointed as Lambardar.

ORDER (21-7-23).

I am very loth to interfere on revision when both —Collector and Commissioner are agreed, but in this case (which is a Revenue Officer's case and not a revenue court case) it seems to me that the rule regarding the appointment of heirs of Lambardars has been ignored. (17(ii)).

Before taking further action I shall be glad if the Collector will inform me (through Commissioner) of the reasons why he passed over Mohammadan Din. This man according to the pedigree table is descended from the paternal great grandfather of the last incumbent and therefore his claims to succeed on the ground of inheritance cannot be ignored. If there is any defect in him which renders him ineligible the nature of the defect should be stated. It is not sufficient to say that other claims to the appointment are not as good as those of the successful candidate. It must be definitely shown that Mohammad Din has a disqualification which in the Collector's opinion, unfits him for the appointment of Lambardar.

ORDER (31-10-23).

My order of the 21st July 1923 will be read as part of this order. The Collector of Amritsar has replied to the reference that the claims of Mohammad Din to succeed should not have been overlooked. It is plain then that the appointment of the respondent, Jalal-ud-Din, was in the nature of a mistake. I accept this petition and direct that Mohammad Din shall be appointed Lambardar in place of the dismissed Lambardar, Lal Khan. As the mistake appears to have been due not to the action of the parties but to the action of the Collector, the parties will bear their own costs.

Petition accepted.

— — —
**IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
 PUNJAB.**

Appellate

Revenue

No. 46 of 1922-23. (Decided on 30-10-1923.)

King, F. C.

SARDAR KHAN

Appellant.

Versus

GUL MOHAMMAD

Respondent.

Lambardar—disqualification—neglect of duty—father excluded for bad record—appointment of son under father's influence unjustified.

Where the record of father was so bad that the Collector was fully justified in excluding him from the Lambardari, the son on whom the father must have obviously great influence and who was not shown to have been disassociated from the father in the various shady practices brought home to the latter, should not be appointed Lambardar.

ORDER.

This is a large village and I agree with the final opinion of the Settlement Officer and the Commissioner's former opinion that there should be two Lambardars. It seems to be strange, however, that it is not possible to find a second man to replace the deceased Lambardar, Bhai Khan. The record of Raja is so bad that the Collector was fully justified in excluding him from the Lambardari and I am rather surprised that the Collector should have thought Sardar Khan, the son of Raja, to be a fit man. The father obviously must have a great influence over the son and there is nothing on the record to show that the son has in any way been disassociated from the father in the various shady practices that have been brought home to the latter. I therefore, dismiss the appeal of Sardar Khan, son, of Raja.

Gul Mohammad's appeal or application must also be dismissed, because if he is appointed as a Lambardar it will have the effect of reducing the number of Lambardar in the village to one which I do not propose to do unless I am given some better reason for it than the fact that there does not appear to be any one suitable to replace the deceased Lambardar in a large village like this. A further search will doubtless produce some one suitable.

The appeals or applications for revision of the other two candidates are also dismissed, but that does not mean that they are not to have any further opportunity of applying for the Lambardari when further search is being made for a Lambardar to succeed to the vacant appointment.

The parties to bear their own costs throughout.

Applications dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 63 of 1922-23. (Decided on 31-10-23.)

King, F. C.

SHIV LAL

*Appellant.**Versus*

LALU

Respondent.

Lambardar—dismissal of father—son not under the influence of father—not excluded from lambardari—C. P. C. S. 149—appeal filed in time—deficiency, in court fee made up—re-presented after time—Limitation Act, S. 5—time may be extended.

An appeal was filed before the F. C. on 4th September, last date of limitation, and court-fee on the same was put under the old law. It was returned to make the deficiency good and was finally put in on the 12th September. Held, that the mistake was *bona fide* and that it was not necessary to dismiss it on the ground of limitation. Held also that where, after his dismissal and even before it, the conduct of the father of the appellant was such as to please the local authorities and on the facts on record it did not seem that the father was likely to exercise an evil influence over his son, held, that the appellant should not be excluded from his hereditary right of succeeding as Lambardar.

Appeal from the order of Commissioner of Ambala Division.

ORDER.

A preliminary objection was taken by the Advocate who appeared for the respondent on the ground that the appeal in my Court is barred by limitation. The last date for the presentation of the appeal is admittedly the 4th of September. The petition was filed in this Court on that date but was insufficiently stamped and had to be returned to make the deficiency good, and was finally put in on the 12th of September.

It appears that the Advocate for the appellant put on the petition of appeal the Court fees due under the old law. I think that this mistake is a *bona fide* mistake and that it is not necessary to dismiss the appeal on the ground of limitation. On the facts the question is whether Shib Lal minor should be disqualified for the trouble in which his father was involved. The facts as to this trouble are stated in the Commissioner's order. It is clear that after his dismissal and even before it the conduct of Megha, the father of the appellant, was such as to please the local authorities and on the facts, as they appear on the record now before me, it does not seem that Megha is likely to exercise an evil influence over his son, Shib Lal. Under the circumstances, I think it would be hard to exclude Shib Lal from his hereditary right of succeeding as Lambardar. I therefore accept the appeal and cancelling the order of the Commissioner I restore the order of the Collector appointing Shib Lal to be a Lambardar in place of his father Megha dismissed. The respondent will pay the costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 1 of 1922-23. (Decided on 13-6-1923).

King, F. C.

LALA DEOKI NANDAN, Official Receiver

*Appellant**Versus*

BUDH RAM and others

Respondents.

Punjab Alienation of Land Act.—S. 7—Sub-section (3)—right of redemption—insolvency of mortgagor—his rights vest in the Official Receiver.

Under the provision of S. 7, sub-section (3) of the Alienation of Land Act, the mortgagor may at any time redeem his land on the payment of such proportion of the mortgage debt as the Deputy Commissioner determines to be equitable; and, in case the mortgagor becomes insolvent, the Official Receiver takes up his position and is the representative and can thus claim redemption on payment of sum fixed as equitable.

Appeal against the order of the Commissioner, Ambala Division.

ORDER.

The Commissioner's order is obviously wrong. Under the provision of S. 7, sub-section (3) of the Alienation of Land Act, the mortgagor may at any time redeem his land on the payment of such proportion of the mortgage debt as the Deputy Commissioner determines to be equitable. The Commissioner has not permitted the land to be redeemed at all. If the Commissioner had said that he thought the amount fixed by the Collector as being equitable was not enough, that would have been a good reason for refusing to permit redemption for that sum. The Commissioner has not, however, said this. He has not at all discussed the question of how much is equitably due to the mortgagee on account of the mortgage debt and until that question is decided, the question of whether the mortgage shall be continued or; cannot be decided. I remand the case to the Commissioner and direct him to report as soon as possible the amount of mortgage debt which he deems to be now equitably payable to the mortgagee, having regard to all the circumstances of the case. I may state here that I do not altogether agree with the Collector's reason, which seems to me unduly unfavourable to the mortgagee. The cost of this hearing will follow the final result.

ORDER.

The simple facts are that there was a mortgage for Rs. 1,500 in the form permitted by S. 6 (1) (a) of the Alienation of Land Act XIII

of 1900. This mortgage was for 20 years, and 9 of these 20 years have elapsed. The mortgagor has become insolvent and the receiver has applied for redemption of this land under S. 7 (3) of the Alienation of Land Act. The Commissioner in his report says that the Official Receiver cannot claim redemption. It seems to me, however, that the Official Receiver is in the position of the mortgagor and is clearly the representative of the mortgagor. So far as the mortgagor's rights vest in the Official Receiver, the Official receiver is competent to enforce them. The application of the Official Receiver to redeem this land is, therefore, to my mind quite valid. There now remains the question what proportion of the mortgage debt should be paid to the mortgagee before redemption. The Deputy Commissioner, who wrote a fairly long order has decided that a sum of Rs. 436-15-6 is due to the mortgagee. I have not been able to follow his reasoning very closely, but apparently what he has done has been to deduct from the mortgage money rent paid by the mortgagor to the mortgagee on account of this same land (for it must be remembered that the mortgagor for sometime cultivated the land under the mortgagee as his tenant) and also sums due on account of bonds for rent and decrees received but probably not yet satisfied. The Commissioner, on the other hand, has calculated that the amount due is $11/20$ th of the whole mortgage money. He assumes that the in accordance with the arrangements made $1/20$ th of the mortgage money with interest would be paid off every year. On the whole, I think that Commissioner's method of calculation is equitable. It is needless to follow out the course of the complicated litigation which has taken place between the parties. The mortgagees may receive the full amount of their decree money or they may not, we should value the amount of the decree money only in terms of the mortgage money, that is to say, Rs. 1/500. Assuming that the parties intended to act fairly by each other, $1/20$ th of Rs. 1,500 would have been paid off with interest each year and the whole debt would have been satisfied after 20 years. For these reasons I agree with the Commissioner in thinking that the amount now due to the mortgagee is $11/20$ th of Rs. 1,500, that is to say, Rs. 825. I, therefore, accept this appeal and direct that the mortgage shall be redeemed on the payment by the mortgagor to the mortgagee of the sum of Rs. 825. The mortgagees can make their own arrangements for collecting any decrees held by them. It seems to me that the parties have been trying to act unfairly by each other in this case and I, therefore, direct that each side should pay its own cost throughout.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 2 of 1922-23. (Decided on 21-4-1923).

King, F.C.

JAWAND SINGH and another

*Appellants.**Versus*

DALIP SINGH.

Respondent.

Punjab Alienation of Land Act, S. 3—permission to sell to a non-agriculturist—alienor an issueless, old and indebted zamindar Land Administration Manual Para 37 (iii) (b)—sanction may not be granted.

An issueless, old and apparently dilapidated man, who had no interest left in his land, applied for permission to sell a part of it in order to raise money to redeem the rest of it. Held, that it was obvious that his object in selling the land a part of it, was to defeat his reversioners; and it was inequitable to permit such a sale, and that the Alienation of Land Act was meant to prevent transactions of precisely that nature.

(ii) Appeal—by reversioner—against sanction for sale—maintainability.

Held, that a reversioner of an issueless agriculturist is entitled to appeal against an order, granting sanction for sale of land to a non-agriculturist. 4 P. R. 1908 (Rev.) followed.

Appeal against the order of the Commissioner of Jullundur Division.

ORDER.

The only point, about which I had any doubt in this case, was whether the reversioner of an alienor should be permitted to appeal against an order of the Deputy Commissioner or Commissioner giving permission to the sale of land. It seems to me that case of *Ram Saran Das v. Sazdara and another* (reported as No. 4 Revenue Judgment in the Punjab Record of 1908) meets this difficulty. That was also a case, in which a reversioner appealed to the Commissioner, and it was held by my predecessor Sir James Wilson, that the appeal was justifiable. The question now is whether, in accordance with para 37 (iii) (b) of the Land Administration Manual, permission to sell this land should be granted. The alienor is an indebted Zaindar and he wishes to sell a part of his land in order to raise money to redeem the rest of it. I would note that in such a case it by no means follows that sanction should be given. The Financial Commissioner's instruction merely says that this is a case in which sanction may be given. In this case now under consideration, the alienor is an old and apparently dilapidated man, who has no interest left in his land and who has no direct issue. It seems obvious that his object in selling

the land or a part of it is to defeat his reversioner, and I think it would be inequitable to permit such a sale. I think that the Deputy Commissioner is right in saying that the Land Alienation Act was meant to prevent transactions of precisely this nature. I, therefore, accept the appeal, cancel the order of the Commissioner and restore that of the Deputy Commissioner, refusing to sanction the sale of any part of this land. The alienor will pay all the costs.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 6 of 1922-23. (Decided on 5-4-1923.)

C. M. King, F. C.

NATHU, and others.

*Plaintiffs Appellants.**Versus*

ALI BAKHSI and others

Defendants Respondents

Punjab Tenancy Act, S. 5 (1) (a)—occupancy rights—acquisition of—ignorance of tenant as to land revenue—no ground for.

Held, that there is nothing in S. 5 (1)(a) which would lead one to suspect that ignorance on the part of the tenant as to the amount of land revenue will assist him in establishing a claim under that section.

Punjab Tenancy Act, S. 6 and 22 (c)—occupancy right—increase of rent.

Where the occupancy tenants have been paying more than the land revenue and cesses since the year 1885 when a new assessment came into being and there was a slight reduction in the land revenue of the particular holding.

Held that the tenants were occupancy tenants under S. 6 and the enhancement of rent to -/4/- in the rupee of the land revenue was not excessive.

Appeal against the order of Commissioner, Jullundur Division.

ORDER.

The main question for decision is whether the occupancy tenants, the defendants in this case, are occupancy tenants under S. 5 or under S. 6 of the Tenancy Act. The original Court found that they were occupancy tenants under S. 6. On appeal the Commissioner has decided that they are occupancy tenants under S. 5 (1) (a). Section 5 (1) (a) very strictly defines the conditions, which must be fulfilled, if a tenant is to obtain occupancy rights under that sub-section. One of these strict conditions is that he must not pay more than the land revenue and cesses assessed on the land in which the occupancy rights are claimed. Now it is an admitted fact that the occupancy tenants in this case do pay more than the land revenue and cesses and they have paid more than the land revenue and cesses ever since the year 1885 when a new assessment came into being and there was a slight reduction in the land revenue of this particular holding. The Commissioner gets round this fact by asserting that as the tenants acted in

ignorance when they paid more than the land revenue and cesses, they cannot be held liable for the result of their action. I do not know what authority the Commissioner has for holding as he has held. There is nothing in S. 5 (1) (a) which would lead one to suspect that ignorance on the part of the tenant as to the amount of land revenue will assist him in establishing a claim under that section. My experience is that, in the vast majority of cases, the tenant is quite ignorant of the amount of land revenue of his holding. The figure, that is fixed in his mind, is the rent which he pays the landlord. If the Commissioner's finding is correct, there will be hundreds of cases probably in which the tenant will be successful under S. 5 (1) (a), because, he will plead that he is ignorant that the amount of his rent exceeds the land revenue payable for his holding. For these reasons, I am unable to uphold the Commissioner's finding. I find that the tenants certainly have not occupancy rights under S. 5 (1) (a). The appropriate section is S. 6. Finding as I have on this main issue, I find also that the enhancement decreed by the Assistant Collector is a proper enhancement. It amounts only to -/4/- in the rupee of the land revenue. I accept the appeal and restore the order of the first Court. The costs throughout will be paid by the defendants.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 22 of 1921-22. (Decided on 8-2-1922.)

Casson, F. C.

MST. ASGHARI BEGAM and others

*Applicants**Versus*

THAKAR

Other Side.

**—Punjab Tenancy Act, S. 5 (1) (c)—occupancy rights—acquisition of
—practice.**

Where in a suit to contest notice of ejectment the plaintiff's father was proved to have been in the village in 1839, but not earlier, the founder having sold all his rights to a third party in 1836, the plaintiff could not be said to have acquired occupancy rights in the village on the plea of being settled by the founder.

Case forwarded by the Commissioner of Ambala for order of the Financial Commissioner.

ORDER.

For the reason given by the Commissioner in his order forwarding the case for revision, it is clear that there is no proof that plaintiff-respondent's ancestor settled along with or was settled by the founder. The founder was Khiwan. He parted with all his rights to Col. Skinner in 1836. Plaintiff has shown that his ancestor was in the village in 1839, but he has not proved that he was there at any earlier date. Khiwan could

not possibly have settled him in the village in 1839 as the Khiwan then had no rights in the village. Therefore following the decision (relating to the same village and family) Revenue Case No. 156 of 1915-16, (original suit No. 34 of 1915 of Assistant Collector, Hissar); I set aside the order of the Assistant Collector and Collector and dismiss plaintiff's suit and he will be ejected in accordance with the notice of ejectment in due course.

(I notice that the Collector's order is lamentably brief and inadequate and comes under 2 P. R. 1898 Revenue ordinarily and should have sent the case back for proper decision but in the present case appellant the person aggrieved by Collector's order, could not possibly do better than he does by the order I have now passed. Hence, it would be more waste of time to have the case dealt with afresh by the Collector).

Suit dismissed.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1924.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 85 of 1923-24. (Decided on 28-3-1924).

King, F.C.

KARAM ILAHI *Applicant*

Versus

CHANAN SINGH *Other Side.*

Lambardar—Dismissal—absentee—negligence.

Held, that although it is an undoubted fact that if a lambardar is habitually absent from his village and makes no arrangement for a substitute or for the performance of his duties during his absence, he would be liable to dismissal and might rightly be dismissed by the Collector, but it must not be assumed that because a man is absent therefore he will neglect his duties or neglect to appoint a substitute to perform his duties. Every man must be given some sort of chance. Absence is not a punishable offence. It must not be assumed that because a candidate is an absentee from the village, therefore he will ipso facto be negligent of his duties. In considering the question of appointment of a lambardar, the disqualifications or demerits of the candidate alone must be considered, if he is entitled to succeed by the rule of primogeniture. The mere fact that there is another candidate in the field with superior qualifications will not justify a Collector in appointing that man, if that man is not eligible by the rule of primogeniture. Where there is a large section of Arains in a village and if a non-Arain is appointed, the Arains would be left without a lambardar as their representative, it would be undesirable to appoint the non-Arain candidate.

Revision from the order of the Commissioner of Jullundhur Division.

ORDER.

The petitioner, Karam Ilahi, appears to be the nearest male heir of Khair Din, lambardar, who has resigned his office. (He is not deceased

as stated in my order of the 29th February 1924). The argument urged against Karam Ilahi by the respondent is that Karam Ilahi is not a resident of this village. In other words, the fact of absence, it is argued, is a defect which would justify a Collector in dismissing a lambardar. Now, it is an undoubted fact that if a lambardar is habitually absent from his village and makes no arrangement for a substitute or for the performance of his duties during his absence, he would be liable to dismissal and might rightly be dismissed by the Collector, but it must not be assumed, that because a man is absent therefore he will neglect his duties or neglect to appoint a substitute to perform his duties. Every man must be given some sort of chance. Absence is not a punishable offence. Absence combined with negligence would be a punishable offence. We must not assume that because Karam Ilahi is an absentee from the village therefore he will *ipso facto* be negligent of his duties. I am therefore very definitely of opinion that Karam Ilahi has not in him any such defect as would justify his exclusion from the lambardari. It has been pointed out more than once in many rulings that in considering the question of appointment of a lambardar, we must consider the disqualifications or demerits of the candidate alone, if he is entitled to succeed by the rule of primogeniture. The mere fact that there is another candidate in the field with superior qualifications will not justify a Collector in appointing that man if that man is not eligible by the rule of primogeniture. For these reasons then I think that the Collector was wrong to choose Chanan Singh in preference to Karam Ilahi. There are other reasons why I think the Collector's order is wrong. Chief among these is the fact that there is a large proportion of Arains in this village and if Chanan Singh is appointed, the Arains will be left without a lambardar as their representative, which is undesirable. I notice that both the local Officers, the Naib Tahsildar and the Tahsilda recommended the claims of Karam Ilahi, and it was not till the papers went to the Revenue Assistant that the claims of Chanan Singh were supported. I think that the Revenue Officers from the Revenue Assistant upwards have made a mistake in appointing Chanan Singh. I therefore accept this petition and direct that Karam Ilahi shall be appointed lambardar in place of Khair Din, resigned. Chanan Singh will pay the costs throughout.

Petition accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate.

Revenue.

No. 23 of 1923-24. (Decided on 18-2-1924).

King, F. C.

KHAN ZAMAN

Appellant

Versus

MST. SARDAR BIBI

Respondent.

Punjab Land Revenue Rules—Rule 17 (1) (d)—Lambardar succession—appointment of female—rival candidates owning very little land.

Held, that under the rules a woman shall only be appointed, if she is the sole owner or for any other special reasons. Consequently, where the rival candidates, compared with the widows of the deceased, had very little land and were in some way implicated in the murder of or attempt to murder the deceased lambardar, the widow was justifiably appointed in preference to her reversioners.

Appeal from the order of the Commissioner of Multan Division.

ORDER.

The facts are given in the orders of the Collector and the Commissioner. The Collector has decided in favour of Khan Zaman, the half brother of the deceased lambardar, and the Commissioner has decided in favour of Mst. Sardar Bibi, one of the widows of the deceased lambardar. Under the rules, a woman shall only be appointed if she is the sole owner or for any other special reasons. In this particular case, the special reasons are that the only other candidates have, compared with the widows of the deceased, very little land and are in some way implicated in the murder of or in the attempts to murder the deceased lambardar. The appellant Khan Zaman, it is true, made his attempt about 26 years ago but the fact remains that he is still one of those who are alleged to have attempted to murder the deceased, who has eventually been murdered. I think, therefore, that the reasons for the appointment of a woman in this case are sufficient and that r. 17, (ii) (d) does not prevent the appointment of Mst. Sardar Bibi. I am as a rule against interference with the Collector's discretion in such matters, but in the present case the Commissioner has, I think, justified the appointment of Mst. Sardar Bibi, and I refuse to interfere. The appeal is, therefore, rejected.

Appeal rejected.

**IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.**

Revision Side.

Revenue.

No. 18 of 1923-24. (Decided on 14-1-1924).

King, F. C.

ALLAH DAD

Applicant

Versus

KHUSHI MOHAMMAD

Other Side.

Pnnjab Land Revenue Act, S. 16—Revisional powers of Financial Commissioner—powers to be only exercised where there is a real danger of failure of justice.

Held, that S. 16 gives the Financial Commissioner an unfettered discretion to decide whether he should modify an order or not, the only proviso being that he shall not reverse or modify any proceedings affecting any question of right between private persons without giving these persons an opportunity of being heard. But these powers should only be exercised where there is real danger of serious failure of justice and no precedent should be made by interference in a case in which actually there is no failure of justice or the failure of justice is so small as not to cause any appreciable harm.

ORDER.

The facts are fully given in the order of reference, dated the 15th October 1923, and in the order passed by the Collector mistakenly on review, dated the 3rd August 1923. I am asked to exercise my revisional powers under S. 16 of the Punjab Land Revenue Act, XVII of 1887. S. 16 gives me unfettered discretion to decide whether I shall modify an order or not, the only proviso being that I shall not reverse or modify any proceedings affecting any question of right between private persons without giving those persons an opportunity of being heard. It appears in this case that two orders have been passed in mutation cases Nos. 458 and 459, which appear to the Collector to be contradictory. The orders are not on the face of them contradictory. If they remain as they are, the land revenue can be collected without any person being compelled to pay land revenue, who does not wish to pay or think that it is his duty to pay. The only difference will be that a person, who thinks that he ought to be shown as a mortgagee of a certain area and who was formerly shown as a mortgagee of that area is no longer shown as the mortgagee. An order has been passed showing that the mortgage has been redeemed, this order being based on a statement made by the mortgagee himself. Now, it is probable or possible that the mortgagee made his statement about the redemption of the mortgage, under some misapprehension, but there is no question at all about his having made that statement, and that statement having been made it was right and proper that a Revenue Officer should act upon it and acting upon it should show the mortgage in the revenue papers as having been redeemed. If the mortgagee now comes forward and says that his statement was wrong or made under misapprehension, that is not a good reason for me to vary the decision made by the Revenue Officer in mutation proceedings. It may be a good reason for the mortgagee to bring a civil suit, but in these proceedings we are not concerned with civil suits, and I do not think that any miscarriage of justice or failure of justice will occur, if I refuse now to exercise my powers of revision. I am very strongly of opinion that my powers of revision should only be exercised when there is a real danger of serious failure

of justice, and no precedent should be made of interference in a case in which actually there is no failure of justice or the failure of justice has been so small as not to cause any appreciable harm. For these reasons, I refuse to interfere in these proceedings.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 124 of 1923-24. (Decided on 8-8-1924).

King, F. C.

MOHKAM DIN

Applicant

Versus

CHIRAG DIN and others

Respondents.

Punjab Tenancy Act, S. 60—occupancy rights, sold to one of the landlords—consent of other landlords not obtained—validity—possession to whom to be given.

Where occupancy rights were sold to one of the landlords without the consent of the others, held, that the sale was voidable as against other landlords. Held also, that the tenant be replaced in possession and that if he is not found, land should be given to the proprietary body of the holding as a whole. Held further, that as regards any dispute as to possession among the proprietary body, it should be decided in a civil Court, for such question of right does not concern Revenue Court.

Revision from the order of the Commissioner of Lahore Division.

ORDER.

The facts are briefly these :—

Chiragh Din, plaintiff, Mohkam Din, defendant, and others *proforma* defendants are owners of land in dispute and Shamoo and sons of Mohammed are occupancy tenants. The occupancy tenants have sold the land to Mohkam Din, who has obtained possession. Chiragh Din has brought a suit to cancel the deed of sale, which was made without the consent of the proprietors and to dispossess Mohkam Din. The Assistant Collector cancelled the sale, dispossessed Mohkam Din, and gave Chiragh Din possession as against Mohkam Din and the remaining proprietors. The Collector on appeal cancelled the sale but made no order as to dispossession of Mohkam Din. The Commissioner on appeal to him has restored the order of the Assistant Collector and has directed that Mohkam Din must have a separate suit to recover the purchase money from Chiragh Din or the occupancy tenants. It seems to me that the correct order is that the tenant is to be put in possession, if he is to be found, and he can claim possession as against the whole proprietary body. If the tenant cannot be found, then the whole

proprietary body is entitled to possession as against Mohkam Din, to whom the tenancy was sold. I therefore accept this petition and modify the decree to this extent that I cancel the sale of tenants to Mohkam Din and I direct that tenants shall be replaced in possession, if they can be found, and if they cannot be found the land is to be put in possession of the proprietary body of the holding as whole. If there is a dispute as to which of the proprietary body is to have actual physical possession that dispute will form the subject of the civil proceedings, which have no concern with these revenue proceedings,

The cost in this appeal will be borne by the parties.

Petition accepted,

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 158 of 1923-24. (Decided on 22-10-1924.)

King, F. C.

MST. HAYAT BIBI.. .. Applicant

Versus

JALAL DIN and others Respondents.

(i) Punjab Land Revenue Act, S. 37—Application of—duties of a Revenue Officer in a mutation proceeding.

Held, that under the section an entry in a record of rights shall not be varied in subsequent records otherwise than by making entries in accordance with facts proved or admitted to have occurred.

In a mutation proceeding, the Revenue Officer is not concerned with law or custom except so far as the law or the custom applicable is admitted by the parties to the proceeding.

(ii) Punjab Land Revenue Act, S. 16—Revision—interference when to be refused.

Held, that interference on revision should be refused where no great injustice would be done to the petitioner.

Revision from the order of the Commissioner of Lahore Division

ORDER (1st July, 1924.)

The facts appear to be as follows :—

Mst. Hayat Bibi is the widow of one Ahmad Ali. On the death of Ahmad Ali, she succeeded to his property and mutation took place in her favour. Since then she has re-married, and a fresh entry has been made in the register of mutations by which her name is struck out entirely and the names of the reversioners of Ahmad Ali are entered in its place. The Tahsildar (Assistant Collector, 2nd grade) who first enquired into the case sanctioned the mutation. On appeal, the Collector restored the

old entry and on second appeal the Commissioner has restored the order of the Tahsildar. Against the Commissioner's order this petition for revision has been filed. The law on the subject of mutation is contained in S. 37 of the Land Revenue Act. In that section it is distinctly laid down that an entry in a record of rights shall not be varied in subsequent records otherwise than by making entries in accordance with facts proved or admitted to have occurred. The other clauses of S. 37 are not relevant to the present case. Now what are the facts which have been proved or admitted in the present proceedings?

(i) There is the fact of the old entry. Mst. Hayat Bibi is shown as owner of the land in dispute.

(ii) There is the fact admitted that Mst. Hayat Bibi has married again.

These are the only facts, with which we are concerned and these facts do not seem to me to justify a change in the entry, I draw special attention to the wording of the section. We are not here concerned with law or custom applicable or the custom except so far as the law applicable or the custom applicable is admitted by the parties to the proceedings. In this case the facts are admitted, but the law is in dispute. It seems to me clear then that the proper course to take is that taken by the Collector to refuse to sanction mutation of names. If the respondents the opponents of Mst. Hayat Bibi have a case, they must prove it by a regular suit, and it is not for a Revenue Officer acting under this section to discover what the law is, when it is doubtful, or to attempt to interpret custom under similar conditions of doubt. For these reasons, I think that the Commissioner is wrong in his order. The question arises whether I should now vary that order and thus prolong litigation. I am very definitely of opinion that mutation cases should be stopped at the earliest possible moment. They are not in any sense final, unless they are agreed to by the parties, and it is foolish of parties to waste money on them when they can resort to Courts where their cases can be finally decided. Ordinarily, then I should not interfere on revision in such a case, but I shall hear what the parties have to say before deciding finally. Let notice issue to both parties.

ORDER (22nd October, 1924.)

I have heard Mr. Ghulam Mohay-ud-Din Vakil for the petitioner and Mr. Asghar Beg Vakil for the respondents. There is one additional fact not mentioned in my order of 1st July 1924, which has been emphasised by the Vakil for the respondents, and that is that at the present moment the respondents are in the possession of the disputed land. It would appear from the order of the Assistant Collector on the

mutation proceedings that they have been in possession ever since the date of those proceedings, that it to say, since the 28th February 1923. In these circumstances no great injustice will be done by my refusing to interfere. The result of interference would only be to vary the entry without altering the facts as to the possession, and I am by no means sure that such interference would be just. For these reasons, in spite of the fact that I think that the Commissioner's order is probably wrong, I refuse to interfere.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate.

Revenue.

No. 35 of 1923-24. (Decided on 28-3-1924).

King, F. C.

R. B. LALA DIWAN CHAND..

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...Appellant

Versus

CROWN..

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...Respondent.

Punjab Land Revenue Act, S. 58—Assessment of land—principles governing—allowing for improvements.

Held, that as a question of principle, land has to be assessed at the rate at which it is assessable owing to its state at the time of the assessment. Certain definite classes of improvements, e.g., the construction of canals, water-courses and digging of wells or making dams should be allowed for, when an assessment is made. But the ordinary improvements, which take place in the course of regular cultivation are not included among the improvements for which an allowance is made when an assessment is imposed.

Second Appeal against the order of Commissioner of Multan Division.

JUDGMENT.

King, F.C.—This is an appeal against an appellate order passed by the Commissioner of Multan confirming an order of the Settlement Officer of Lyallpur fixing the rates of land revenue of the appellant's land at Rs. 4-8 per acre fluctuating. The arguments used are that the land is not of the same quality as the land of adjoining estates, that it is very sandy, that the present owner has expended large sums in reclaiming it and making it culturable, that even yet the cropping shows that the land is not of as good quality as the land of adjoining estates, and that if the rates fixed by the Settlement Officer are charged, the revenue rates plus *Abiana* will absorb all the profits of the land and leave nothing to the owner. A further objection is taken on the ground that the Settlement Officer dismissed the application for reconsideration with a brief order in vernacular, and that in this order he did not consider all the points put forward in the grounds objecting to the assessment. Taking this

last point first, it would have been better if the Settlement Officer had gone into more detail in his order rejecting the application for reconsideration. I have, however, read his first order, dated the 12th February 1923, very carefully, and I have no doubt at all that the Settlement Officer made a very careful examination of this estate before fixing the assessment, and that in his order rejecting the application for reconsideration it would have been sufficient if he had merely referred to his previous order assessing the estate, because it seems to me that that previous order covers all the grounds taken in the objection statement made by the appellant.

Another ground on which objection is taken is the differentiation between the appellant and other owners of the village. The appellant has been assessed at Rs. 4-8-, while some of the other owners have been assessed at Rs. 3-8--. The reason for this differentiation is clearly stated in the order of the Settlement Officer when he says that although there are some good squares which can pay a very high rate yet the squares are so much mixed up and all owners have parts of all classes of land to such an extent that it is unnecessary to classify particular squares. The Settlement Officer has, therefore, 'taken an average which will be applicable throughout the Chak. That average is the class known as 3B, the rate for which is Rs. 4-8 per acre. Having obtained his average, the Settlement Officer has reduced the assessment in the case of particular owners. He has granted special concessions to some *Jangli* owners who have only half square holdings, and he has also differentiated the squares of some *abadkars*, who have squares, which vary in quality greatly from the average. The result of applying this method of differentiation is to retain all squares belonging to the appellant in the higher class. Whether they have been rightly placed in that higher class is a question of fact which could be determined only by the Settlement Officer after inspection of the Chak, I feel sure that a Settlement Officer, such as Mr. Penny, must have made a very careful inspection of this estate just as he did of other estates before passing his orders, and I have no reason to suppose, and it is not indeed alleged, that Mr. Penny, was so careless as to include in the higher class squares which should obviously have been in the lower class. The truth is that if the holding of R. B. Diwan Chand, the appellant, were considered by itself, there would have been some squares liable to a higher assessment than the 3B rate and some squares liable to a lower assessment than 3B rate. The average assessment of the whole holding, is however, the 3B rate, and there are no special considerations for reducing that rate in particular squares as there are in other squares. The owner is a wealthy man, and therefore on that ground no consideration is necessary. The owner has some very good land to compensate him for some land of poor quality. That also is

another reason for not giving special consideration to land of poor quality. Taken all round the assessment then at the 3B rate seems to me to be fully justified.

We have now to consider the case of this estate compared with that of other estates in the immediate neighbourhood. One of the grounds of the appeal is that this estate is inferior in quality to the neighbouring estates. It is admittedly proper in respect to its cropping. The soil appears to be more sandy and more uneven, but it must be remembered that it gets a more regular and sure water supply, and Mr. Penny in his note says that locally it is reputed to have a good water supply. In this colony the water supply counts for a good deal more than the quality of soil unless the soil happens to be exceptionally bad. For the reasons given by Mr. Penny then I think that this estate can be treated as being on the whole at least of the same quality as neighbouring estates. There is the final argument that the owner has improved the estate greatly and has brought it to its present condition by the expenditure of large sums. There can be no doubt that the old record show that this estate was a very poor one when the colony was first founded and Mr. Penny's recent report shows that it is now up to the average of the colony and possibly a little better than the average. The owner must then be given the credit for the great improvement that has taken place. I question whether this improvement has been due to any extent to the direct expenditure of money. Doubtless the fact that the owner was a wealthy man had its part in the great development that has taken place. The owner being wealthy could afford to take a smaller rent from his tenants and thus employ tenants to bring the land under proper cultivation and to improve its quality. He would not have been able to subsist on a small rental if he had not his private wealth to fall back upon, but it is a wide step from this state of affairs to say that the owner has put a large sum of money into the land, and I am not prepared to say that he has done this, and there is certainly no evidence to show his having done so in the record before me. As a question of principle, land has to be assessed at the rate at which it is assessable owing to its state at the time of the assessment. There are certain definite classes of improvements which are allowed for when an assessment is made. Such improvements are the construction of canals, water courses and digging of wells or the making of dams and so on. The ordinary improvements which take place in the course of regular cultivation are not included among the improvements for which an allowance is made when an assessment is imposed. Therefore, even though the owner has improved the land, as he appears to have improved it, that would not of itself be a reason for a reduction in the assessment. I have considered all the points brought forward which are of any importance, and I find that I am unable to interfere.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 16 of 1923-24. (Decided on 15-11-1924).

King, F.C.

WARYAM SINGH..

.. .. .

..Appellant

Versus

SUNDER SINGH....

.. .. .

...Respondent.

**Lambardar—Succession—Principle as to—candidate not likely to
reside permanently.**

Held, if there is a little prospect of a candidate permanently taking up his abode in a village for the Lambardari of which he is a candidate, he should not be appointed a lambardar. Before appointing a stranger inquiry should be made as to whether a near relative of the deceased Lambardar is available.

Second appeal from the order of Commissioner of Lahore Division.

ORDER.

I agree with the Commissioner in thinking that there was little prospect of Waryam Singh's permanently taking up his abode in the village Basu Panuant to the Lambardari of which he has been appointed. I am not at all impressed by the certified copy produced by the counsel for the appellant, which shows that Waryam Singh has mutated his land in the colony in favour of his minor son aged 7 years. The fact that this alienee is only 7 years old was elicited before me. It seems to me that this mutation is only a blind. Waryam Singh has been rightly passed over for the Lambardari by the Commissioner. There does not seem, however, to be any reason why Sunder Singh should replace him. If there is an objection to Waryam Singh's appointment, there are other nearer relatives than Sunder Singh, namely, Balwant Singh, Jiwan Singh, and Sohan Singh; and although none of these has applied to be appointed as Lambardar, the probability is that one of them will be ready to apply, and that the reason for their not applying formerly was because Waryam Singh was a candidate. I, therefore remand the case to the Commissioner, and request him to select some other relative in succession to the deceased Budha Singh, Waryam Singh, being excluded. Of course if there is relative against whom there is some objection, then the Commissioner will have a free hand to appoint whom he likes. The appeal is to this extent accepted. The parties will pay their own costs,

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

No. 1 of 1923-24. (Decided on 11-1-1924).

Revenue

King, F. C.

MULA SINGH..

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...Appellant

Versus

FAZAL HUSSAIN SHAH....

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...Respondent

Punjab Alienation of Land Act, S.7—Lease or mortgage—terms of the deed.

Where a lump payment has been made in advance and where there are other provisions in the body of the document, e. g the use of the word 'fak' indicating that the document is mortgage and not a lease, the document must be considered to be a mortgage and liable to the provisions of S. 7 of the Alienation of Land Act.

Appeal from the order of Commissioner of Rawalpindi Division.

ORDER.

The question for decision is whether the document executed by Sardar Bibi and Sardar Begum is a lease or a deed of mortgage. The document on the face of it purports to be a lease for 20 years, the rent having been paid in one lump sum in advance. I am of opinion, however, that the Commissioner is right in thinking that this is only a device of the person, in whose favour the document is executed to evade the provisions of S. 7 of the Alienation of Land Act. If the document were a lease, he would be entitled to hold the land leased for the whole term of the lease, in this case 20 years. If, on the other hand, it is a mortgage, the mortgagee can hold the land for not more than 20 years, but the mortgagor can at any time release the land on payment of such a sum as the Deputy Commissioner may deem to be equitable. In the present case the representatives of the executants of the lease or mortgage has applied for action to be taken under S. 7 of the Alienation of Land Act to release the land. The Deputy Commissioner has decided that the document is a lease and not a mortgage and therefore action cannot be taken under S. 7.

On appeal to the Commissioner, the Commissioner has decided that in fact the document, although purported to be a lease, is a mortgage deed and as such is liable to the provisions of S. 7 of the Alienation of Land Act. I have considered the terms of the document carefully, and agree with the Commissioner in thinking that the document is a mortgage and not a lease. The reasons for thinking so are :—

- (i) the payment in one lump sum of the consideration ;
- (ii) the use of the word 'fak' the terms which is only used with regard to the release of the mortgage-deed. If this were deed of lease,

one would expect the use of a word such as 'khatm' but this word is not used.

I think it would be wrong to allow mortgagees to evade the provisions of the Alienation of Land Act by pretending that documents in their favour are leases, when they really are mortgages. I hold that in a case like this, where a lump payment has been made in advance and where there are other provisions in the body of the document indicating that the document is a mortgage and not a lease, the document must be considered to be a mortgage and liable to the provisions of S. 7 of the Alienation of Land Act. I therefore dismiss this appeal with costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue

No. 49 of 1923-24. (Decided on 22. 11. 1924).

Barron, F.C.

MUNSHI SINGH and others

Appellants

Versus

BHAGWAN SINGH and another

Respondents.

Allotment of street—original lay-out interfered with—objection filed after a great delay.

Extra Assistant Settlement officer made an allotment of a lane and objections as regards the lane were lodged after a great delay, after the ground had been built over. It was found that the blocking up of the lane did not inconvenience the objectors.

Held, (i) that it is very objectionable that the original lay-out of the village should be interfered with and the lane be blocked up and

(ii) that in the above peculiar circumstances the original order of allotment stands but that it should not be taken to constitute a precedent for other ordinary case.

Appeal against the order of the Commissioner of Multan Division.

ORDER.

I have heard counsel on both sides at considerable length in this case and have come to the conclusion that there are reasons for differentiating it from the case quoted in the Commissioner's order.

In the first place there was very great delay in lodging an objection to the allotment of lane No. 84-1 by Bhagwan Singh and Sewa Singh. The allotment was made to Munshi Singh etc. in April 1923, and it was not till after they had built over the ground that the respondents lodged their

objection in February, 1924. Bhagwan Singh and Sewa Singh had more or less put themselves out of Court by securing for themselves the division of a part of the lane No. 81 lying between Sewa Singh's house and Munshi Singh's house. This, it is true, was a *cul de sac*, but their action shows that they were prepared to disregard the original lay-out of the village, when it suited them. Then again the blocking up of the lane No. 84-1 does not really inconvenience Bhagwan Singh and Sewa Singh to any great extent. The distance from their houses to the village well is exactly the same whether they have to go round the north and west of site No. 19 to get to the village well or whether they go to the east of site No. 19 and the south of site No. 17. I quite agree with the Commissioner that it is very objectionable that the original lay-out of the village should be interfered with in this way and that lanes should be blocked up. The circumstances of this case are, however, peculiar and it will not constitute a precedent for other ordinary cases. In this particular case considering the length of time, which elapsed before objection was taken to the allotment of Block No. 84-1 and the expense to which the appellant had, in the meantime, been put in erecting their buildings, and considering also the small amount of inconvenience to which the objectors will be put, I do not think there is sufficient justification for cancelling the allotment merely to satisfy the obvious grudge the respondents bear to the appellants. I, therefore, accept the appeal, and direct that the original order of allotment should stand. Parties will each bear their own costs.

Appeal accepted.

IN THE COURT OF FINANCIAL COMMISSIONER OF THE PUNJAB.
Revision Side.....Revenue.

No. 13 of 1923-24. (Decided on 15-12-1924)

King, F. C.

SHAHBAL and another.....*Applicants*

Versus

MATHERA DAS.....*Other side.*

Punjab Alienation of Land Act, Ss. 6 (1) (a) and 7(3)—redemption of mortgage—proportion of mortgage—debt to be paid.

A certain land was mortgaged under S. 6 (1) (a) of the Punjab Alienation of Land Act. It was found, after nearly a third of the period for which the land was mortgaged had passed, that so far only the amount of fair interest had been paid and no principal had been paid off. The land was a good Nahri land.

Held, that it was not equitable to order the payment of the whole of the mortgage-debt in a suit to redeem the land.

Revision from the order of Commissioner of Lahore Division.

ORDER.

The area mortgaged appears to be 233 kanals, 5 marlas. The mortgage money is Rs. 2,900. A great part of the land is canal irrigated by flow. The land is mortgaged to the mortgagee in accordance with the terms of S. 6 (1) (a) of the Punjab Alienation of Land Act, for a period of 16 years. The Collector has found that during the past 5 years, the income of the land has not exceeded the interest which can fairly be charged at 1 per cent. on the balance, and that as a consequence nothing of the principal has so far been paid off; and in fact there has been a slight increase of Rs. 4. Thus he has found that until the whole amount of the mortgage-money is paid up, the land cannot be redeemed. S. 7, Sub-section (3) of the Land Alienation Act prescribes that "the mortgagor may redeem his land at any time during the currency of the mortgage, on payment of such proportion of the mortgage-debt as the Deputy Commissioner determines to be equitable." The question is, is it equitable now to order the payment of the whole mortgage-debt, when nearly a third of the period for which the land was mortgaged, has elapsed? Of course if the produce of the land was very variable, and if there had been a succession of 5 bad years, it might be argued that it would be unfair to permit redemption, except on payment of the whole mortgage-money, because it might be said that the mortgagee is looking forward to the future 11 years to provide a good proportion of bountiful harvests out of which he will be able to recoup himself for his mortgage-loan. As, however, the land is good *Nahri* land, or at least a proportion of the land is good *Nahri* land, it does not seem likely that there have been or will be such variations in production as to suggest the advisability of allowing the mortgagee the full amount of the mortgage-money. I am quite uncertain as to what the correct amount of the mortgage-money now due is but I am not satisfied that the calculation prepared by the Assistant Collector, Mr. Malik is correct. It may be correct, or it may be incorrect. All I desire is to be satisfied that it is correct. I, therefore, remand the case to the Collector for further enquiry and report as to the correctness of the calculation made by Mr. Malik, and, in case that calculation is not correct, as to the amount which should be struck off the mortgage-debt, if the land is to be redeemed at once. I repeat that it clearly to be understood that I am not deciding that Mr. Malik's calculation is wrong. I only wish for further proof that it is right, and it is only in case that further proof is not forthcoming that I wish for a further enquiry to show what sum should now be equitably paid to the mortgagee before the land can be redeemed.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue

No 159 of 1923-24. (Decided on 26 11-1924.)

*King, F.C.*KALU AND OTHERS.....*Applicants.**Versus*KASHI RAM..*Respondent***Punjab Tenancy Act S. 84—Revision—limitation—time not extended absence of material irregularity in exercise of jurisdiction—interference declined—occupancy rights—presumption.**

Interference on revision was declined by the Financial Commissioner on two grounds, viz ; (i) that the petition was filed 90 days after the date of decision of lower Court and no reason was shown for extension of the ordinary period, (ii) that there had been no material irregularity or misapplication of jurisdiction. *Obiter dictum.* Where the land in question had been held for a period of more than 30 years by the tenant and by his immediate representatives-in-interest and no rent other than the land revenue was paid during the whole of that time, held, that there was ground for acting on presumption under S. 5 (2) of the Punjab Tenancy Act,

Revision from the order of the Commissioner of Ambala Division.

ORDER.

I am not going to interfere in this petition for revision for two reasons. One, because it was filed 90 days after date, and although it is a petition for revision, and not an appeal, yet I see no reason in the petition for extending the time that would ordinarily be allowed in appeal. My second reason for not interfering is the fact that there has been no material irregularity or misapplication of jurisdiction. I cannot refrain however, from pointing out to the lower appellate Courts that I think their decisions are based on a mis-apprehension of the law. The Collector's order is so scanty that I find it a little difficult to follow his line of reasoning. He says: "The presumption of two generations previous to 1863 is impossible, but there is nothing in the record, that I have been able to find, to prove the impossibility of this presumption. S. 5, sub-section (2) of the Tenancy Act allows for a certain presumption to be made, and it is clear from the facts which have been proved that that presumption has been correctly allowed by the Assisant Collector. The land in question has been held for a period of more than 30 years by the tenant and by his immediate representatives-in-interest, and no rent other than the land revenue has been paid during the whole of that time. Therefore, under sub-section (2), the presumption that the land has been held for more than two generations through a grandfather or grand uncle and for a period of not less than 20 years, has been correctly established. There is no evidence rebutting this presumption and it seems to me, therefore, that the Assistant Collector's finding in favour of the tenants was justified. The Collector, although he says that it is

should have been two generations of tenants before 1863, has not referred to any facts which establish this impossibility. The Commissioner in his order has upheld the Collector's order and has said that there is no evidence of any other generation holding the land prior to 1863. This fact does not rebut the presumption created by S. 5, sub-section (2). If there is no evidence as the Commissioner has stated that a decision should have been given in favour of the tenants and not in favour of the landlord.

These remarks are made for the information of the lower Court, and not because I intend to interfere. The petition is rejected.

Petition rejected.

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 204 of 1923-24. (Decided on 15-12-1924.)

King, F. C.

CHHITTAR

Applicant

Versus

ARE MALMALI

Other side.

Punjab Land Revenue Act, S. 37—mutation—mistake—objection by other party—procedure to be followed.

Held, that where one party objects strongly to the new entry, no question of correction arises, and that if there has, in fact, been a mistake made, owing to a mutation order, and if that mistake has been incorporated in the revenue records, the only way to correct the mistake is by way of a regular suit.

Revision from the order of the Commissioner of Ambala.

ORDER.

It is agreed that the facts are as stated in the Commissioner's order of reference, dated the 25th August, 1924. I share the Commissioner's surprise that the Collector should have confirmed the orders of the Assistant Collector in these cases. No question of correction can arise in a case like this where one party objects strongly to the new entry. If there has, in fact, been a mistake made, owing to a mutation order, and if that mistake has been incorporated in the revenue records, the only way to correct the mistake is by way of a regular suit. Proceedings such as those now under revision are entirely irregular. The law governing this subject is contained in S. 37 of the Land Revenue Act, XVII of 1887. In the matters now under consideration, it is obvious that none of the conditions laid down in clauses (a) (b) and (c) of that section apply, and that, therefore, there should have been no change ordered in the revenue records. I accept this petition for revision, and I cancel the orders of the Assistant Collector, varying the orders of mutation contained in mutation Nos. 807, 862 and 934. This means that the orders of 19th July, 1919, 15th April, 1921, and 27th November, 1921, will stand, and that the order

of 13th March, 1924, is cancelled. The respondent will pay all costs. s. 16 will be allowed as costs in the Court.

Petition accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 128 of 1923-24. (Decided on 5-5-1924).

King, F. C.

KHAIR DIN

Applicant

Versus

JAMU

Other side.

(i)—Punjab Land Revenue Act, S. 37—facts admitted or proved—proof or admission of facts necessary for alteration.

Held, that the Revenue Officers are not permitted to alter revenue records merely because they think that mistakes exist in them. They must have certain facts before them and they must act in accordance with the law.

(ii)—S. 16—order passed in contravention of provisions of S. 37.

Held, that an order passed in contravention of provisions of S. 37 being ultra vires may be set aside by the Financial Commissioner on revision.

(iii) Punjab Land Revenue Act, S. 13—appeal—maintainability.

Where the Collector confirms the order of the Assistant Collector, held, that no appeal lies to the Commissioner from the order of the Collector.

ORDER.

(7th April 1924) The Commissioner has sent up this record for me to take action under S. 16 of the Land Revenue Act XVII of 1887. The facts appear to be that the Naib-Tahsildar on attesting the *Jamabandi* of *Mauza Gadhera* discovered what he thought was a mistake in the order in which the *Khata*s were recorded in column No. 4 of the *Jamabandi*. He accordingly directed that a mutation should be entered up for the correction of this mistake. This was done. In the course of the enquiry into the mutation certain objections appear to have been made by one of the parties, but in spite of these objections the Assistant Collector passed an order directing a change in the *Khata*s. An appeal was made against the Naib-Tahsildar's order and this appeal was dismissed. The second party, who also objected to the order, has also filed an appeal and the Collector has submitted the case to the Commissioner urging that, as his predecessor had already passed orders and as these orders had been confirmed on appeal to the Commissioner, therefore, the Collector could not now consider this second appeal. As a matter of fact, there could have been no appeal to the Commissioner, because the Collector confirmed the order of the Assistant Collector. The Commissioner's order could therefore have been passed only on the revision side. After a full consideration, I am of opinion that the initial mistake made was to pass an order sanctioning mutation.

None of the circumstances detailed in S. 37 of the Land Revenue Act exists, that is to say, there are no new facts proved or admitted and the new entries are not agreed to by all the parties interested therein. The Assistant Collector's order, therefore, sanctioning mutation was *ultra vires*. Revenue Officers are not permitted to alter revenue records merely because they think that mistakes exist in them. They must have certain facts before them and they must act in accordance with the law. The Collector does not seem to have fully appreciated the position and his order dismissing the appeal and thereby confirming the mutation was therefore wrong. The question having been raised again in the second appeal which has now been sent to me for orders, I have gone into the whole matter and I think that the proper order to pass is one dismissing or refusing to sanction the mutation. As this order will now affect one of the parties adversely, before passing it, I direct that notice shall issue to both parties and a date shall be fixed early in May before I go to Simla when I shall hear both parties and pass final orders.

ORDER. (5th May 1924)

My order of the 7th April 1924, will be read as part of this order. I have heard Mr. N. C. Mehra for the respondent, and I see no reason to vary the opinion expressed in that order. I therefore cancel the orders passed by the lower Courts and I direct that the original order sanctioning the mutation shall be rescinded, that is to say, there shall be no change in the entries in the revenue papers. No costs.

[Order accordingly.]

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate.

Revenue.

No. 35 of 1923-24. (Decided on 28-3-1924).

King, F. C.

R. B. L. DIWAN CHAND

Appellant

[Versus

CROWN

Respondent.

Punjab Land Revenue Act, S. 58—assessment of land—principle governing—allowing for improvements.

Held that, as a question of principle, land has to be assessed at the rate at which it is assessable owing to its state at the time of the assessment. Certain definite classes of improvement, e. g., the construction of canals, water-courses and digging of wells or making of dams should be allowed for, when an assessment is made. But the ordinary improvements which take place in the course of regular cultivation are not included among the improvements for which an allowance is made when an assessment is imposed.

Appeal against the order of the Commissioner of Multan Division.

DIWAN CHAND v. CROWN.
ORDER.

This is an appeal against an appellate order passed by the Commissioner of Multan confirming an order of the Settlement Officer of Lyallpur fixing the rates of land revenue of the appellant's land at Rs. 4-8-0 per acre fluctuating. The arguments used are that the land is not of the same quality as the land of adjoining estates, that it is very sandy, that the present owner has expended large sums in reclaiming it and making it culturable, that even yet the cropping shows that the land is not of as good a quality as the land of adjoining estates, and that if the rates fixed by the Settlement Officer are charged, the revenue rates plus *abiana* will absorb all the profits of the land and leave nothing to the owner. A further objection is taken on the ground that the Settlement Officer dismissed the application for reconsideration with a brief order in vernacular, and that in this order he did not consider all the points put forward in the grounds objecting to the assessment. Taking this last point first it would have been better if the Settlement Officer had gone into more detail in his order rejecting the application for reconsideration. I have, however, read his first order, dated the 12th February 1923, very carefully, and I have no doubt at all that the Settlement Officer made a very careful examination of this estate before fixing the assessment, and that in his order rejecting the application for reconsideration it would have been sufficient if he had merely referred to his previous order assessing the estate, because it seems to me that that previous order covers all the grounds taken in the objection statement made by the appellant.

Another ground on which objection is taken is the differentiation between the appellant and other owners of the village. The appellant has been assessed at Rs. 4-8-0, while some of the other owners have been assessed at Rs. 3-8-0. The reason for this differentiation is clearly stated in the order of the Settlement Officer when he says that although there are some good squares which can pay a very high rate yet the squares are so much mixed up and all owners have parts of all classes of land to such an extent that it is unnecessary to classify particular squares. The Settlement Officer has therefore taken an average which will be applicable throughout the Chak. That average is the class known as 3 B, the rate for which is Rs. 4-8-0 per acre. Having obtained his average, the Settlement Officer has reduced the assessment in the case of particular owners. He has granted special concessions to some Jangli owners who have only half square holdings, and he has also differentiated the squares of some Abadkars, who have squares, which vary in quality greatly from the average. The result of applying this method of differentiation is to retain all squares belonging to the appellant in the higher class. Whether they have been rightly placed

in that higher class is a question of fact which could be determined only by the Settlement Officer after inspection of the Chak. I feel sure that a Settlement Officer, such as Mr. Penny, must have made a very careful inspection of this estate just as he did of other estates before passing his orders, and I have no reason to suppose, and it is not indeed alleged, that Mr. Penny was so careless as to include in the higher class squares which should obviously have been in the lower class. The truth is that if the holding of Rai Bahadur Diwan Chand, the appellant, were considered by itself, there would have been some squares liable to a higher assessment than the 3 B. rate and some squares liable to a lower assessment than the 3 B. rate, the average assessment of the whole holding is, however, the 3 B. rate, and there are no special considerations for reducing that rate in particular squares as there are in other squares. The owner is a wealthy man and therefore on that ground no consideration is necessary. The owner has some very good land to compensate him for some land of poor quality. That also is another reason for not giving special consideration to land of poor quality. Taken all around the assessment than at the 3 B. rate seems to me to be fully justified.

We have now to consider the case of this estate compared with that of other estates in the immediate neighbourhood. One of the grounds of the appeal is that this estate is inferior in quality to the neighbouring estates. It is admittedly poorer in respect to its cropping. The soil appears to be more sandy and more uneven, but it must be remembered that it gets a more regular and sure water supply, and Mr. Penny in his note says that locally it is reputed to have a good water supply. In this colony the water supply counts for a good deal more than the quality of soil, unless the soil happens to be exceptionally bad. For the reasons given by Mr. Penny then I think that this estate can be treated as being on the whole at least of the same quality as neighbouring estates. There is the final argument that the owner has improved the estate greatly and has brought it to its present condition by the expenditure of large sums. There can be no doubt that the old records show that this estate was a very poor one when the colony was first founded, and Mr. Penny's recent report shows that it is now up to the average of the colony and possibly a little better than the average. The owner must then be given the credit for the great improvement that has taken place. I question whether this improvement has been due to any extent to the direct expenditure of money. Doubtless the fact that the owner was a wealthy man had its part in the great development that has taken place. The owner being wealthy could afford to take a smaller rent from his tenants and thus employ tenants to bring the land under proper cultivation and to improve its quality. He would not

have been able to subsist on a small rental if he had not his private wealth to fall back upon, but it is a wide step from this state of affairs to say that the owner has put a large sum of money into the land, and I am not prepared to say that he has done this, and there is certainly no evidence to show his having done so in the record before me. As a question of principle, land has to be assessed at the rate at which it is assessable owing to its state at the time of the assessment. There are certain definite classes of improvements which are allowed for when an assessment is made. Such improvements are the construction of canals, water-courses and digging of wells or the making of dams and so on. The ordinary improvements which take place in the course of regular cultivation are not included among the improvements for which an allowance is made when an assessment is imposed. Therefore, even though the owner has improved the land, as he appears to have improved it, that would not of itself be a reason for a reduction in the assessment. I have considered all the points brought forward which are of any importance, and I find that I am unable to interfere.

Appeal rejected.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings.

1925.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 22 of 1924-25. (Decided on 9-2-1925).

King, F. C.

JIWA

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Applicant

Versus

KARAM BAKHSH

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Respondent

Punjab Land Revenue Act,—S. 4 — Land not paying revenue enclosed within Municipal limits—jurisdiction of Revenue Officers over such land.

It must not be assumed that merely because a definite area of land which does not pay revenue happens to have been included, for jurisdictional purposes within the limits of a Municipal Committee, the act of including it within Municipal limits makes it the site of a town or village within the meaning of S. 4 of the Land Revenue Act, so as to oust the jurisdiction of the Revenue Officer over such land. Each case must be decided on its merits.

Revision from the order of the Collector of Ludhiana forwarded by the Commissioner of Jullundur.

ORDER.

The Commissioner of Jullundur has submitted this case for revision on the ground that the land, with respect to which the Revenue Officers subordinate to him have exercised jurisdiction, does not pay revenue and is the site of a town, namely, the town of Jagraon. He argues that S. 4(1) of the Land Revenue Act for this reason debars the jurisdiction of Revenue Officers. This question turns on a decision of the point whether land not

paying land revenue, which is enclosed within Municipal limits, *ipso facto* becomes the site of a town. I entirely dissent from this assumption. Each case must be decided on its merits. But it must not be assumed that merely because a definite area happens to have been included, for jurisdictional purposes within the limits of a Municipal Committee, the act of including it within Municipal limits makes it the site of a town or village within the meaning of S. 4 of the Land Revenue Act. I asked the Advocate for the petitioner if he could produce any authority to justify the Commissioner's interpretation of the law, and he was unable to do so. I hold, therefore, that this land was land over which Revenue Officers could exercise lawful jurisdiction. As to the question whether proper discretion was exercised in this case or not, it is not necessary to come to a decision nor is it necessary to decide whether a pond is agricultural land within the meaning of the Tenancy Act. Neither of these questions affects jurisdiction. I, therefore, reject the petition.

Petition rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue

No. 7 of 1924-25. (Decided on 6-4-1925.)

King, F. C.

GHULAM RASUL

Appellant.

Versus

KHUSHAL CHAND

Respondent

Zaildar—appointment of—claim of sufedposh.

Deputy Commissioner who had a poor lot of Lambardars from whom to make a choice, decided to appoint a man as Zaildar who was not a Lambardar. The Commissioner decided that the appointment should be given to the Sufedposh. There were some reports of the police officials against the character of the Sufedposh. Held, that though his appointment was not an ideal one, it must be confirmed.

Appeal against the order of the Commissioner of Lahore,

ORDER

I have heard counsel at length in this case. The position seems to be that the Deputy Commissioner had a poor lot of Lambardars from whom to make a choice, and in his difficulty he decided to appoint a man who was not Lambardar.

The Commissioner has considered the case very carefully, and has decided that the appointment should be given to the Sufedposh. I was against this order only on account of the report of the police official which depicted Khushal Chand's character in very lurid colours. There are, however, certain facts which make it appear that this vivid description of Khushal Chand's character is greatly exaggerated. There is no doubt that Khushal Chand has many enemies even in his family. The appointment of Khushal Chand is not an ideal appointment, but in the circumstances this is the best that can be made. I dismiss the appeal.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Rev nro

No. 14 of 1924-25. (Decided on 6-4-1925.)

King, F. C.

AHMAD KHAN

.. Appellant.

Versus

NOTA KHAN

... Respondent.

Lambardar—succession—principle as to—claim of person entitled to succeed under rule 17, cl. (ii)—not to be set aside though application made after delay.

The claim of a person who is entitled by rule 17, cl. (ii) of the Land Revenue Rules to succeed the deceased Lambardar can only be set aside, if it is proved that for some inherent defect in him he is unfit for the appointment. The mere fact that he did not apply at the beginning itself does not prejudice his case.

Appeal against the order of the Commissioner of Multan Division.

ORDER

It would seem that the reason why the Collector did not appoint Nota Khan as Lambardar was, because Nota Khan had not apparently applied for the appointment. The record shows that at a subsequent date Nota Khan did apply for the appointment, and it will be seen that his omission to do so at the very beginning was due to the fact that his nephew, Fateh Khan, the brother of the deceased Lambardar was an applicant and was nearer in relation to the deceased than himself, and did not want to prejudice his case by putting forth his claim against Fateh Khan. However that may be, the

position is clear. Nota Khan is entitled by rule 17 clause (ii) of the Land Revenue Rules to succeed the deceased Lambardar, and his claim can only be set aside if it is proved that for some inherent defect in him he is unfit for the appointment. No attempt has been made by any one to suggest that this is the case. The brothers of the deceased Lambardar are excluded because they have not enough property. A like cause of exclusion does not exist in the case of Nota Khan and the Commissioner was right in choosing him as Lambardar. The appeal is dismissed with costs against the appellant. Pleader's fees Rs. 32.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision side.

Revenue.

No. 210 of 1923-24. (Decided on 14-2-1925).

Barron, F. C.

DWARKA DAS

Applicant

versus

LACHHMAN DAS and another.

Respondent

Punjab Land Revenue Act, S. 16—Revision—passing summary orders is undesirable.

Held that to pass an order summarily, changing one form of tenancy to another, without hearing the person recorded as tenant, opens the door to undesirable practice; especially where the applicant is an official employed on colony work, such an order is ultra vires and liable to be set aside in revision.

Revision from the order of the Commissioner of Multan Division.

ORDER

I have heard the counsel for both sides. In spite of the facts stated in the Commissioner's order rejecting Dwarka Das's appeal I cannot but accept this revision application for the reason that the Collector's order of 26th October 1923 passed on an application presented on that date by Lachhman Das, a Naib Tahsildar, should not have been passed in this summary fashion without hearing what Dwarka Das, in whose name this tenancy was then entered, had to say in the matter. It is quite possible that the orders which altered the tenancy from a half resumable to one an ordinary *abadkari* conditions and added the names of Dwarka Das's two brothers Lachhman Das and Jagan Nath as tenants were perfectly

correct and justifiable. But to pass such an order summarily without hearing the person recorded as tenant opens the door to undesirable practices, especially when, as in this case, the applicant was an official employed on Colony work.

The revision is accepted and the Collector's order of 26th October 1923 is cancelled. The case will now be remanded for a proper enquiry to be made on Ch. Lachhman Das's application and for a fresh order on the merits of the case. No order as to costs.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue

No. 13 of 1923-24. (Decided on 22-10-1925).

Stow, F. C.

SHAHABAL and another

Applicants

Versus

MATHRA DAS

Respondent

Punjab Alienation of Land Act, S. 7—Allowing 5 per cent. simple interest is too low.

Held, that interest at the rate of 12 per cent. per annum is reasonable and 5 per cent. simple interest is too low. I P. R. 1920 Rev. referred to

Where the mortgage-money was actually increasing due to the low rate of batai taken in the tenancy and more than half of the mortgage-money included interest on the old debts :

Held, that the only course open to the mortgagor, wishing to redeem the land was either to pay off the mortgage-debt or wait till the expiry of the term of mortgage.

Revision from the order of the Commissioner of Lahore Division.

ORDER

The case has been subjected to thorough examination. In his order of 15th December 1924, Mr. King enquired whether it was "equitable now to order the payment of the whole mortgage-debt when nearly a third of the period for which the land was mortgaged has elapsed." He was not satisfied that the calculation prepared by the Assistant Collector,

* See 1924 P. C. L. 14 for full report of the order of Mr. King F. C.

Mr. Malik, was correct and remanded the case to the Deputy Commissioner for further enquiry and report as to the correctness of this calculation. The Deputy Commissioner has sent in his report dated 8th June, 1925, and on further enquiry from me on certain points a further report dated 19th August 1925. These reports show that the calculation made by Mr. Malik is defective in certain respects.

- (a) The calculation is wrong even according to the principles which Mr. Malik has adopted
- (b) The prices used by Mr. Malik are those of the Settlement of 1904-05. The Revenue Assistant of the District has prepared another statement showing what the profits would be for the years 1917-18 to 1921-22.
- (c) The rate of interest should be 5 per cent. simple interest and not 10 per cent compound interest, which was charged by Mr. Malik.

The Revenue Assistant also doubts whether Mr. Malik was justified in taking as the net profit the rent paid by the mortgagee's lessee. According to the Revenue Assistant, there is reason to suspect that the mortgagee, in addition to the cash rent which he received from his lessee, was also taking a share of the grain as well. The Deputy Commissioner, however, considers that the evidence on this point is so weak that he is unable to accept the Revenue Assistant's conclusion.

According to the calculations made by the Revenue Assistant, regarding the net profits, *Kharif* 1918 to *Rabi* 1925, Rs. 2,274-10-0 of the mortgage-money has been paid off. The Revenue Assistant has included simple interest at 5 per cent. or Rs. 655-10-0

But in view of the ruling, *Baga Singh v. Shahab Din* (1) interest at the rate of 5 per cent. per annum must be considered too low. I have referred to Mr. Casson's R. O. A. No. 3 of 1920-21 and other cases, and find that a rate of 12 per cent per annum has been generally considered reasonable. The result of my calculations is worked out in the statement attached to this order. The statement shows that the mortgage-money is actually increasing. This is due to the low rate of *batai* taken in this tenancy, and also to the fact that out of the mortgage-money, Rs. 2,900, more than half is due to interest on the old debts. I have had the opportunity of consulting the Settlement Officer of Sheikhupura, Sheikh Nur Muhammad, regarding the calculation of the outturn. He assures me that in this village, Pir Kot, such a return is by no means extraordinary, and his opinion is borne out by the instances of rate taken on neigh

(1) 1 P. R. 1920 (Rev): 1920 P. C. L. 7 (Rev.)

The application is, the refore, rejected.

Application rejected.

Revision side.

Revenue.

Barron, F. C.

ABDUL HAQ Applicant

Versus

UNAR DIN Respondent.

Revenue authorities are competent to revise mutation proceedings of Revenue Officers at any time, if the ends of justice require it, even though no appeal has been filed in time from such mutation orders.

A sale of certain land was made by a minor, but the mutation order was passed after he had attained majority. Held, that as the sale on which mutation was based had taken place, when the minor was not competent to enter into any such transaction, it was void.

Case submitted by the Collector of Lyallpur.

ORDER.

The only real argument in favour of Umar Din is that Abdul Haq had attained his majority before the mutation order was passed. But the sale

on which the mutation was based had taken place at a time when Abdul Haq was not competent to enter into any such transaction. The facts are stated in the Collector's order of 9th October 1924 and need not be repeated. In the reasons given in that order and in the report of the Commissioner I accept this revision and cancel the *Tahsildar's* mutation order of 12th February, 1924. The previous entries in the land revenue records will be restored. Each party will bear its own costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue

No. 4 of 1924-25. (Decided on 21-10-1925.)

Stow, F. C.

WALI and another

Appellants

Versus

IMAM DIN

Respondent

Punjab Alienation of Land Act, S. 6 (a) parties of different status—transaction to be treated as one falling under S. 6 (1).

A transaction purported to be a lease of land by an agriculturist of Gujrat District in favour of an Arain, who claimed to be of the same village as lessor. The language of the mutation was not altogether clear as both words Mustagar and (Zar Rehn) were used. It appeared that the lessee had come originally from Amritsar and belonged to the professional class of land agents who are prepared to take over land and make what they can out of it in any part of the Colonies. Held, that the Collector was perfectly justified in considering the transaction as one falling under S. 6 (1) (a) of the Act and as such one in which action might be taken under (S. 7 (3)).

Appeal from the Commissioner of Rawalpindi Division.

ORDER.

Notice was issued to the parties to appear on the 20th of October, 1925. On the 20th October, Wali and Ali applicants, appeared. Imam Din, respondent, was served: but it was reported that he had gone to *Mauza Kaura Tahsil*, Bhalwal. His real brother Ida was informed, who promised to give him notice. Imam Din, however, did not appear. But the service may be considered sufficient.

The applicants are *Gujars* of the *Phalia Tahsil* of the Gujrat District. The respondent, Imam Din, is an *Arain* who is said to be

the resident of the same village as the applicants. He originally came from Amritsar, though he asserts that he has been settled in this village for some years. The Collector considered that this was a usufructuary mortgage covered by section 6 (1) (a) of the Land Alienation Act, and took action under section 7 (3) of that Act and ordered possession to be restored to the mortgagors and the land considered redeemed. The Commissioner was of the opinion that the respondent must be considered to belong to the Gujrat District. But there appears to be no doubt that his original home is Amritsar, and it would appear that he belongs to the professional class of land agents who are prepared to take over land and make what they can out of it in any part of the new colonies. There is little doubt, in my opinion, that the definitions and the status laid down by the Act must be adhered to. The Commissioner seems to have had no doubt that the transaction was a mortgage, and not a lease. The language of the mutation is not altogether clear as both words "*Mustajar*" and "*Zar Rehn*" are used. The mortgage-money is said in the mutation to be Rs. 1,200.

I consider that the Collector was perfectly justified in considering this transaction (as) one falling under section 6 (1)(a) of the Land Alienation Act and as such one in which action might be taken under section 7 (3). It remains to consider whether the mortgagee's profits from cultivation have been sufficient to clear off the original mortgage-money, Rs. 1,200, together with interest annually charged at 6 per cent. The statement drawn up in the Deputy Commissioner's office, on which that officer relied, shows that the owner's share of the produce was valued at Rs. 3,200 (to be exact Rs.3163-4-0). The Commissioner, however, has been misled by the fact that in this statement the words "*kul paidawar*" occur in two places, firstly, with reference to the gross produce and secondly, with reference to the total profits of the mortgagee. The Commissioner has stated that the value of the gross produce is Rs. 3,200 and has proceeded to work out the mortgagee's share of this. This, however, is incorrect. The mortgagee's share of the produce amounted, according to this statement, to Rs. 3,200. I have since ascertained the actual payments made by the mortgagee on account of land revenue, water rates and Kamins' dues, and have added his share of the value of the *Bhusa*, which is shown separately in the statement. The result will be found in the statements, A and B, appended to this order. It would no doubt have been better if some cash rents had been quoted from land in the immediate neighbourhood, which would have afforded some check on the produce estimates. But even allowing for an exaggeration in the yields shown in the statement prepared in the Deputy Commissioner's office, it is quite evident that the mortgagee's

money has long ago been paid off. No doubt, the Commissioner himself would have come to the same conclusion, if he had not been misled by the form of the statement in the manner I have described. As it is, I must accept the appeal, and restoring the Deputy Commissioner's order, direct that possession be given to the mortgagors and the land considered redeemed without any further payment. Respondent will bear the costs throughout.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side.

Revenue..

No. 101 of 1924-25. (Decided on 6-4-1925.)

King, F. C.

SHEO BAKHSI and others

Applicants

Versus

MAHIPAT and another

Respondents.

Punjab Tenancy Act, S. 84—Revision—disregard of ejectment order by applicant—effect.

Where the lower Courts concurred in ordering the dismantling of the house of the applicant who had shown a complete disregard of the original order directing ejectment, the Financial Commissioner declined to interfere with the order of the lower Courts.

Revision against the order of the Commissioner of the Ambala Division.

ORDER.

In this case I am loth to confirm an order which will have the effect of compelling the appellant to dismantle a house which he has built at a considerable expense; but after very careful consideration of all the facts, I have come to the conclusion that it would be wrong for me to interfere with the orders of the two lower courts. It is plain that the petitioner acted in complete disregard of the original order directing his ejectment from the encroachment. It is plain further that though warned by this order, he proceeded in erecting the building. It is clear, therefore, that he is entirely to blame for any loss he may suffer.

At the last moment it struck me that it might be possible for the parties to agree to a compromise but the endeavours of the counsel on both sides to effect a compromise were unsuccessful.

I am of opinion that the orders of the lower courts must be upheld, and the petition is, therefore, rejected.

Petition rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 25 of 1924-25. (Decided on 27-10-1925).

Stow, F. C.

PIR BAKHSH

Appellant

Versus

YAR MUHAMMAD

Respondent.

Zaildari—technical objections of Commissioner.

Where in a case of zaildari, the Collector approved of one candidate and the Commissioner appointed another, objecting to Collector's choice on merely technical grounds and neither of the two candidates seemed to be entirely satisfactory, held, that the best solution was to ram and the case and to reconsider the claims of all the candidates.

Second Appeal from the decree of the Commissioner of Multan Division.

ORDER.

The appellant, Pir Bakhsh, and the respondent, Yar Muhammad, were present on the 10th of August, 1925. Their counsel were heard, For Pir Bakhsh, Mr. Jagan Nath, for Yar Muhammad, Mr. C. B. Petman.

The Collector decided in favour of Pir Bakhsh, on the ground that he had a better claim as representing the Ghallu tribe, which is the principal tribe in the Zail. He is a *Sufedposh* and the Collector considered that he was in appearance more active than Yar Muhammad. The Commissioner, however, refused to accept Pir Bakhsh as a *Zaildari* on the ground that approval to Pir Bakhsh being a candidate for *Zaildari* was not applied for or obtained, Pir Bakhsh not being a *Lambardar* in the Zail, although he was a *Sufedposh*. The Commissioner appointed Yar Muhammad whom he considered to be in appearance more energetic than Pir Bakhsh.

Pir Bakhsh is not a *Lambardar* in the Khanwah village, although he is a *Lambardar* in Pir Kot Saadat, a village, which was in the Khanwah Zail previous to the Settlement of 1898-99. The Commissioner was disinclined to differentiate between sub-castes of *Jats*. But there can be no doubt that Yar Muhammad does not belong to the predominant class of *Jats*, in the Zail, namely, the Ghallu tribe. The objections of the Commissioner are chiefly technical, and neither of the candidates appears

to be entirely satisfactory. In the circumstances, I think, the best solution would be for the case to be remanded to the Collector, and the claims of all candidates re-considered necessary application for sanction to the candidature of such candidates who are not at present qualified, being made to the Commissioner.

I, therefore, remand the case for a fresh decision. The appeal is accepted to this extent. No costs.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate.

Revenue.

No. 50 of 1924-25. (Decided on 20-10-1925.)

Stow, F. C.

SANTA SINGH

Appellant

Versus

Sardarni MAHTAB KAUR

Respondent.

Lambardar—appointment of woman—services rendered by her husband—sex, whether a bar.

Where a Brahmin widow was the mother of the late lambardar who owned 574 acres out of 990 acres held in proprietary right in a village and the other Brahmins ready to acquiesce in her appointment owned a substantial amount of the remainder and she was the widow of the Colonel Mathura Dass, one of the original grantees in the Rakh whose services, both before and during Mutiny, were considerable. Held, that sufficient reasons existed for her appointment in spite of her sex + P. R. 1920 (Rev.) referred to.

Appeal from the Commissioner of Lahore Division.

ORDER.

Counsel heard on both sides.

For the appellant it was pointed out that *Sardarni Mahtab Kaur*, as the mother of the late *Lambardar*, has really no hereditary status. It was urged that there was no special reason which would justify her being appointed as a *Lambardar* as against male claimants. It is evident that the Collector was impressed by the services which *Santa Singh* has rendered in the last year or two, and thought this was a good opportunity for rewarding him. On the other hand, the Commissioner has clearly shown that *Brahmins* have a predominant interest in this village and that the other claimants, at any rate, those of them who are *Brahmins*, are ready to acquiesce in the appointment of *Sardarni Mahtab Kaur*. The husband of this lady was *Colonel Mathura Das*, one of the original

grantees in the *Rakh*, whose services, both before and during the Mutiny, appear to have been considerable. The question of the appointment of woman to *Lambardar's* post was thoroughly examined by both Financial Commissioners in *Mst. Jiwani v. Ganga Ram* (1). It is laid down in that judgment that "there are features.....which may justify an appointing officer in selecting a woman in spite of her sex, if there are no sufficient countervailing considerations of another order." In my opinion, the Commissioner has shown that the claims of *Sardarni Mahtab Kaur* have features which would justify her appointment. I am, therefore, not prepared to interfere on appeal with the order passed by the Commissioner. I consider that the fact that the late *Lambardar* owned 574 acres out of 990 acres held in proprietary right in this village and that other Brahmins own a substantial amount of remainder, and the historical connection of Colonel Mathura Das's family of which *Sardarni Mahtab Kaur* is now the chief representative, constitute sufficient reasons for the appointment which the Commissioner has seen fit to make. It would appear that the services of *Santa Singh* are considerable and merit recognition, which, it is hoped, the Deputy Commissioner may eventually obtain for them.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 30 of 1924-25. (Decided on 23-11-1925).

Stow, F. C.

KHAN BAHADUR

Applicant

Versus

FATEH MOHAMMAD and others

Respondents.

Review—third application for—costs—appellant not in fault.

In an application for review, no order as to costs was passed. The second application for review as to costs was rejected. For the third time, the plaintiff applied for review. He was in no way responsible for the various instances which resulted in his being deprived of the advantages of the protective lease to which he was entitled. The third application for review was accepted and costs were awarded to him in the Revenue Courts throughout.

Review from the order of the Financial Commissioner, Punjab.

ORDER.

(23rd September 1925).—The circumstances of this case are certainly peculiar. I am prepared to hear the parties with reference to the application for review which has been presented by Khan Bahadur.

(1) 4 P. R. 1920 (Rev.)

ORDER

(20th October, 1925).—Of the respondents Yar Mohammad has been served but has not appeared. Fateh Mohammad, Mohammad Sharif and Mohammad Shafi minors, through Fateh Mohammad, are reported to have refused service of summons which has been attached to their house.

As I have remarked above (my order dated 23rd September 1925) the circumstances of this case are peculiar. I had at first thought that no costs should be awarded in this case. But on subsequent reflection I am of the opinion that the appellant, Khan Bahadur, was in no way responsible for the various instances which resulted in his being deprived of the advantages of the protective lease to which he was entitled. I, therefore, review my order of 11th August 1925 and, accepting the application of Khan Bahadur, order that Khan Bahadur shall be awarded costs in the Revenue Courts throughout.

Announced to Khan Bahadur.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue

No. 11 of 1924-25. (Decided on 4-10-1925).

Stow, F. C.

A NANT RAM

Appellant

Versus

Mst. DAROPDI and another

Respondents

Punjab Land Revenue Act, S. 37—Mutation—rule to be followed—deceased in separate possession of a part of a joint holding through tenants.

Where the deceased was separately in possession through tenants of a part of joint holding upto the time of his death, and made a will in favour of his daughter in respect of such part, held, that it was right to make the mutation in favour of the daughter as owner and to permit the existing tenants in actual or cultivating possession, in the absence of proof of any rights granted to another party by a Civil Court.

Appeal from the Commissioner of Lahore Division.

ORDER.

Part of the joint holding owned by Radha Kishan (deceased), and Anant Ram, the appellant, was held separately by Radha Kishan and cultivated by Roshan and others up to the death of Radha Kishan. After the death of Radha Kishan, in accordance with his will, mutation

of his share of the joint holding was granted to his daughters, the respondents, and consequently the land formerly held separately by Radha Kishan was entered in the name of the daughters. An appeal against this mutation was rejected by the Settlement Collector.

Subsequently, the daughters applied to the Settlement Collector on the 5th of April 1924 asking that the entries in the *Khasra Girdawri* might be checked by a responsible officer, as the *Patwari* was suspected of collusion with Anant Ram, the petitioner. The *Tahsildar* of Shahdara, to whom the petition was sent, reported that the *Patwari* had wrongly entered Anant Ram as in possession. The *Sadr Qanungo* doubted whether the procedure adopted by the *Patwari* was wrong. The Settlement Collector, however, on 17th May, 1924, while accepting the *Sadr Qanungo's* report took action under S. 36 of the Land Revenue Act, and ordered that the respondents should be put in possession and a report submitted. The respondents were put in possession on the 27th of May 1924.

The present appellant appealed to the Commissioner against the settlement Collector's order of 17th May 1924. The Commissioner considered that while the Settlement Collector was wrong in passing an order under S. 36 of the Land Revenue Act, he was right in his object, which was to maintain the respondents' possession. The Commissioner ordered the *Khasra Girdawri* to be altered so as to maintain the respondents' constructive possession. This order has not yet been carried out, as the appellant has appealed in this Court.

After hearing counsel on both sides, I consider that the Commissioner's order was correct. Neither the appellant nor the respondent can have actual or cultivating possession. The only persons whose names should appear in the *Khasra Girdawri* are the respondents as owners and the tenants as cultivators. It may be noted that the tenants recorded in the present *Khasra Girdawri* entries are the same tenants as cultivated for the deceased Radha Kishan, father of the respondents. It is understood that Anant Ram has brought a declaratory suit in the Civil Courts; but until a decree is passed in his favour, the entries in the revenue papers will be determined by the mutation order, which does not justify any entry or mention of Anant Ram in this particular holding.

The Settlement Collector should now correct the *Khasra Girdawri* as directed by the Commissioner.

This appeal is rejected with costs against the appellant.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 53 of 1924-25. (Decided on 4-10-1925.)

Stow, F. C.

FEROZE and others

*Applicants**Versus*

BAHADUR and others

Respondents.

Punjab Land Revenue Act, S. 16—Revenue Court having no jurisdiction—order interfered with.

Where the revenue court had no jurisdiction to hear the suit, the order of the court was set aside on revision.

Punjab Land Revenue Act, S. 153—Jurisdiction of Civil and Revenue Courts.

Two of the numerous share-holders of a certain land, affected by the order of partition, sued the other co-sharers for a declaration that their rights were not affected by partition.

Held, that as the proceedings which it was sought to question were those of a Revenue Officer and not of a Revenue Court, the Revenue Courts could not entertain the suit. 73 P. R. 1910 referred to. 2 P. R. 1913 (Rev.) distinguished.

Petition for revision of the order of Commissioner of Multan Division.

ORDER.

This is a reference from the Commissioner, Multan, recommending that the proceedings of the lower Courts be set aside as the plaintiff (a declaratory suit to the effect that a certain partition does not affect the rights of the plaintiffs) is not cognizable by a Revenue Court.

The partition in question was carried out as long as the 16th June 1920, the instrument of partition being finally drawn up on the 11th November 1920. No appeal was lodged against the order of partition, nor was any application made for the revision of that order. On 13th March, 1924, Feroze and Bahadur, two of the numerous share-holders affected by the order of partition, instituted a suit in the Court of the Revenue Assistant, Montgomery, for a declaration that the partition did not affect their rights, because, the partition had been carried out against the mode of partition as sanctioned. Objection to jurisdiction was at once raised, but the Revenue Assistant decided that the suit was triable by a Revenue Court and called upon the defendants to produce their *jawab dawa*. The defendants in the declaratory suit appealed to the Collector who held that the Revenue Assistant was right in ordering the case to proceed in his Court. Application for

revision was then made to the Commissioner, who has referred the case to this Court with a view to the proceedings in the lower court, being set aside.

With regard to the Commissioner's reference, I would point out that although *Rahmun v. Hasham* (1) lays down that all suits under the Specific Relief Act are exclusively cognizable by Civil Courts, Financial Commissioner (Sir Michael Fenton) ruled in *Duni Chand v. Mst. Padma* (2) that suits for a declaratory decree under the Specific Relief Act must be brought in Revenue Courts, if the subject is such as was reserved for the exclusive cognizance of Revenue Courts. Now, no question of title is involved in this case. The right of the plaintiff to share in the land is not disputed. The only question is as regards the quality of the land. The subject of suit is not, therefore one which should be dealt with by a Revenue Court under S. 117 of the Land Revenue Act. The proceedings which it is sought to question are those of a Revenue Officer and not of a Revenue Court. It would, therefore, appear that the Financial Commissioner's ruling *Duni Chand v. Mst. Padma* (2) does not apply in this case.

I am entirely of the Commissioner's opinion that there is no provision of the law which gives a Revenue Court jurisdiction to hear this suit. I, therefore, set aside the proceedings of the lower Courts and hold that the plaint is not cognizable by them. No order as to costs.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

King, F. C.,

Revision Side.

Revenue.

No 48 of 1924-25 (Decided on 28 3-1925)

UMAR HAYAT and others

Applicants

Versus

FAZIL and another

Opposite party.

Punjab Tenancy Act (XVI of 1887) Ss. 10 and 8—acquisition of occupancy rights under S. 8—not barred by S. 10—scope of latter section.

S. 10 does not preclude a person from acquiring rights of occupancy under S. 8. It only precludes a person from acquiring rights of occupancy under Ss. 5, 7.

Revision from the order of the Commissioner, Ambala Division.

ORDER.

The question for decision is whether S. 10 of the Tenancy Act operates to prevent a person from acquiring a right of occupancy under S. 8 of the Act. S. 10 says "in the absence of a custom to the contrary no

(1) 78 P. R. 1910; 144 P. L. R. 1910.

(2) 2 P. R. 1913 (Rev.) 81 P. L. R. 1913.

one of several joint owners of land shall acquire a right of occupancy under this chapter in land jointly owned by them." S. 8 says, "Nothing in the foregoing section of this chapter shall preclude any person from establishing a right of occupancy on any ground other than the ground specified in those sections." Thus the acquisition of a right under S. 8 is not the same as the acquisition of a right under Chapter II of the Act. In order to acquire a right under S. 8 a person must acquire it by some means not prescribed in Chapter II. Therefore the acquisition of a right under S. 8 is the acquisition of a right by means not prescribed in Chapter II. It seems to me clear, therefore, that S. 10 does not preclude a man from acquiring rights of occupancy under S. 8. It only precludes a man from acquiring rights of occupancy under S. 5-7. Quite apart from this interpretation, however, I am of opinion that the lower Courts were right in holding that the right of occupancy was acquired at some period antecedent to the date when the occupancy tenant became an owner. Thus even if the rights had been acquired in accordance with the earlier part of Chapter V. (S. 5-7), S. 10 should not have been held to operate to prevent the acquisition of those rights. I, therefore, reject the petition for revision.

Revision rejected.

CURRENT
Punjab Case-Law
PART C.
Revenue Rulings.
1926.

IN THE COURT OF THE FINANCIAL COMMISSIONER, OF
THE PUNJAB.

Appellate.

Revenue.

No. 6 of 1925 26 (Decided on 18-1-1926)

King & Barron, F. C.

SEWA RAM, *Appellant*

Versus

CROWN *Respondent.*

**Punjab Land Revenue Act, S. 37—Mutation proceedings—
decision should be arrived at the locality concerned.**

Held, that the rules provide that the decision of mutation proceedings with reference to a particular land should be arrived at in the village in which it is situated.

Naib-Tahsildar—disregard of rules—whether sufficient for suspension—

Where a Naib-Tahsildar was guilty of breach of the rules regarding mutation, held, that the order of his suspension was an unnecessarily severe punishment, though his conduct was censurable.

Appeal from the decree of Commissioner, Multan Division.

ORDER.

C. M. King, F. C.—Naib-Tahsildar, Lala Sewa Ram, has been suspended by the Commissioner, Multan Division, for six months on the

REV. 1.

ground that he was guilty of partially in connection with a certain mutation. The circumstances are such that the punishment is either inadequate or else wrongly inflicted. I have examined the orders carefully, and I have also read most of the Commissioner's file. The facts are that the Naib-Tahsildar sanctioned a mutation, correcting the Revenue Records and transposing the shares of certain land held by the two parties to the mutation proceedings. The Naib-Tahsildar gave as his authority for passing such an order the facts that the parties were agreed and that an old entry in the *jamabandi* of 1889-90 showed the shares to be such as were sanctioned by the mutation order.

Now, it is certain that the old entry supports the mutation order. It also seems probable that the actual shares, in which the property is held, are in accordance with the old entry. It is doubtful if Makhan ever consented to the mutation order being passed. If the matter rested here, there would be very little against the Naib-Tahsildar. Unfortunately, however, there are certain other facts which appear to have been taken into consideration against him, although admittedly such facts are not really relevant to the subject under enquiry, which is the conduct of the Naib-Tahsildar. The facts to which I refer are the theft of the mutation order of December 1891, which was filed with the *jamabandi* of 1893-94, and the subsequent alteration of the *jamabandis* of 1893-94 and the *misal bandobast* of 1895-96. Both the Commissioner and the Collector admit that there is nothing to connect these facts with the Naib-Tahsildar, and I agree with them that there is not a title of evidence to justify the conclusion that Lala Sewa Ram conspired with the *Patwari* in these unlawful acts. I believe that the *Patwari* was alone responsible for them, that he instigated them, and that he was instrumental in corrupting some person in charge of the Record Office, so as to obtain and destroy the orders, the disappearance of which was desired. It seems to me that once this fact is admitted, we must reach the conclusion that we are dealing with a very daring man. Here we have a *Patwari*, who is able to obtain records out of the Revenue Record room and to destroy a part of the record which he has obtained. Obviously, a man who does a deed of this kind, must be very daring, and the probability is that he will stick at nothing. If this conclusion is correct, it seems to me by no means improbable that the *Patwari* should have gone further and should have induced the Naib-Tahsildar, who himself acted innocently, and at worst, with carelessness, to pass an order of mutation in a somewhat irregular way. Leave out of consideration all this question of forgery consider only the facts that this mutation has been sanctioned, and that one of the parties to it has denied that he approved the sanction. It would be impossible to convict the Naib-Tahsildar of anything more than carelessness in reaching his conclusion. Further, it has been established in evidence that some sort of negotiations were going on between the parties. The fact that the partition proceedings were unaccountably

dropped itself suggests that something must have happened. That something was undoubtedly the negotiations as to marriage, which were going on. Such negotiations take a long time, and I can see no improbability in the fact that before they took a favourable turn some five or six months or even longer than that had elapsed. One can imagine that an entry would not be made in the mutation register till after the negotiations had developed favourably. The fact that the mutation was not sanctioned till some three or four months after it was entered in the mutation register, seems to me to confirm the Naib-Tahsildar's innocence in sanctioning the mutation. Again, both the Deputy Commissioner and the Commissioner are agreed that Makhan was present when the mutation order was passed on the 30th April, 1921. Makhan himself denies this, but his denial is not accepted. If Makhan was present, is it possible to believe that he did not assent to the mutation? The Commissioner has assumed that he assented to the mutation but did not really understand what it was about. I find it difficult to believe that if the Naib-Tahsildar were in any way responsible for this fraud on Makhan, he would have troubled to have Makhan present merely in order to perplex him as to the entry which was to be made. It would have been simpler and probably safer from the point of view of a person desiring to commit a fraud of this nature, not to have Makhan present but simply to sanction the mutation in his absence. I think that given the fact that Makhan was present, it is difficult to avoid the conclusion that he assented to the mutation, and except the conduct of Makhan himself, who is admittedly a liar, there is absolutely no fact that warrant the conclusion that Makhan was wrongly informed by the Naib-Tahsildar about the nature of the entry to be made.

It seems to me then that the only facts that have caused a very serious view to be taken of the Naib-Tahsildar's conduct are the irrelevant facts of the conduct of the *Patwari* and others, who were responsible for theft and forgery of records. I think that all that can be brought home to the Naib-Tahsildar is a serious disregard of the rules, which provides for the decision of mutation proceedings as far as possible in the village, where the land, with reference to which the proceedings are made, is situated. This neglect of the Naib-Tahsildar has caused all the trouble. It is possible that if the mutation had been decided in the village of Bhar where the land is situated, the Naib-Tahsildar would have been made aware of the actual facts and he would have saved himself a great deal of trouble. I do not think that he is deserving of more than censure for this breach of the rules, and I think that the order of suspension is an unnecessarily severe punishment. I would, therefore, cancel the order of suspension and merely record a censure in the character Roll of the Naib-Tahsildar.

As the case is one of some importance, I shall be glad to have the opinion of my colleague.

C. A. Barron, F. C.,—I quite agree. This is exactly the impression the case gave me when I read it over.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 190 of 1924-25. (Decided on 5-1-1926).

King, F.C.

RAM RATTAN and others.

Applicants.

Versus.

DEVI RAM and others.

Respondents.

**Punjab Land Revenue Act, S. 36—village records—entry in—
right of share-holders to object to entry in existence for about 44
years—alteration improper.**

Held, that every share-holder in a village has a right to object to the inclusion in the village records of the name of a person, who has by the mere fact of such entry been given rights in the village *shamilat* which he would not otherwise have had. Held further, that it is quite improper that an alteration should be made in the Revenue papers by way of correction of an entry which has been in existence for some 44 years.

Revision from the order of Collector of Rohtak.

ORDER.

5th January 1926.—The facts are fully stated in the order of reference of the Collector dated 8th January, 1925, with which I am in entire agreement. The argument urged before me by Mr. Shamair Chand, who appeared for the second party, is that it is incorrect to say that all the parties interested were not consenting parties to the mutation. He argues thus—

All the other proprietors of the *Thok* agreed to the mutation: therefore there is no objection to sanctioning the mutation as far as the *Shamilat* of the *Thok* is concerned. As far as the *Shamilat* of the *Pana* and the *Deh* are concerned, only the share-holders in the *Thok* have a right to share in the *Shamilat* of the *Pana*, and only the share-holders in the *Pana* have a right to share in the *Shamilat* of the *Deh*. The fact that a certain person is a share-holder in the *Thok* and as share-holder in the *Thok* is entitled to a share of the *Shamilat* of the *Pana* or of the *Deh*, does not in his (counsel's) view affect the share of *Shamilat Deh* or

Shamilat Pana, to be allotted to a particular *Thok*, and, therefore, share-holders in the *Pana* and in the *Deh*, who are not share-holders in this particular *Thok* have no right to object to an entry conferring the rights of a share-holder in the *Thok* on any person.

I cannot agree with this argument. I think that every share-holder in a village has a right to object to the inclusion in the village records of the name of a person, who has by the mere fact of such entry been given rights in the village *Shamilat* which he would not otherwise have had. I think it is quite improper that an alteration should be made in the Revenue papers by way of correction of an entry, which has been in existence for some 44 years, and I am surprised that a Revenue Officer should have been found, who believed that such a method of correcting the Revenue records should be used.

I accept this petition, and I cancel the order of the Assistant Collector, dated 9th December, 1923 sanctioning mutation. The old entry as it existed previous to the passing of that order will be maintained.

Petition accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 105 of 1925-26. (Decided on 12-2-1926.)

C. M. King, F. C.

Mst. SORASTI DEVI.

Applicant.

Versus

Mst. LAKHMI.

Otherside.

Punjab Tenancy Act, S. 84—relief in civil or revenue court available—special powers of revision—exercise of.

Where an aggrieved party has his remedy in the civil or revenue court, held, it is wrong to use the very special powers of revision conferred on the Financial Commissioner.

Revision referred by the Commissioner of Rawalpindi.

ORDER.

This case has been referred to me by the Commissioner of Rawalpindi, in accordance with Section 16, sub section (3) of the Land Revenue Act, 1887.

The facts are plainly stated in the order of reference. I do not propose to consider the applicability of the ruling of Sir Michael Fenton in

the case cited by the Commissioner, because it is clear from the facts that there has not been any failure of justice which cannot be cured by a regular, suit. In a case like this the aggrieved parties have their remedy in the Civil Courts or in the Revenue Courts, and I think it would be wrong to use the very special powers of revision which are conferred upon me by the law to deal with a matter which can otherwise be set right.

The petition is therefore rejected.

IN THE COURT OF FINANCIAL COMMISSIONER, PUNJAB.
Appellate. Revenue.

No. 14 of 1925-26. (Decided on 30-3-1926.)

C. M. King, F. C.

SHAIKH ZAHUR-UD-DIN

Appellant.

Versus

SARDAR and others

Respondents.

Punjab Tenancy Act, S. 80—Sanction to review an order granted—Appeal—maintainability.

Held that the grant of sanction to review an order is not in itself an order and is therefore not subject to appeal. 3 P. R. 1912, (Rev.) approved.

Appeal against the order of Officiating Commissioner, Jullundhar.

ORDER.

Shaikh Abdul Aziz, *Vakil*, present.

I agree with my predecessor Fenton, Financial Commissioner, in his ruling in the case of Ahmad *versus* Ahmad (P. R. 3 (Rev.) 1912) that the grant of sanction to review an order is not in itself an order and is therefore not subject to appeal.

I dismiss this appeal.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate.

Revenue

No. 12 of 1925-26. (Decided on 30-3-1926).

King, F. C.

NADRA and others.

Appellants

Versus.

Mst. NIHAL DEVI.

Respondent.

Punjab Land Revenue Act, S. 37—Mutation proceedings—decision of intricate questions of law to be avoided.

Held that in deciding cases of mutation there is one sound rule, which should always be followed and that is to avoid as far as possible all intricate questions of law or custom. If a decision be reached, which on the face of it is not inequitable without going into any intricate questions of law or custom or even of fact, it is better to come to that decision than to go into the whole maze of intricacies which another decision might entail.

Punjab Tenancy Act, S. 59—Succession-widow-sons born of a woman living as wife with the deceased.

The deceased had left a widow and four sons by a Mohammadan woman who, had lived with him as his wife for about 18 year. Held that as the facts of the case as well as the custom and law, applicable to the facts, are doubtful, the proper course would be to reach at a decision equitable on the face of it and that therefore the mutation be effected in the name of the widow, the intricate question of law and custom to be left to be decided by a civil court.

Appeal from the order of the Commissioner of Rawalpindi.

ORDER.

I have heard counsel on both sides at great length in this case in the hope that some ruling might be cited, which clearly applied to the facts as far as they have been ascertained and as far as they are set forth in the findings of the two Lower Courts. No such ruling has been cited. The facts are that Maya Singh, the owner of the land, mutation of which is now to be made, has disappeared and the circumstances of his disappearance point to his having been murdered. At the time of his disappearance he was living with one *Mussammat* Alan, who had lived with him as his wife for about 18 years and had born him four sons. Previous to his connection with *Mussammat* Alan, Maya Singh had married *Mussammat* Nihal Devi, who is still alive and by whom he had a son, Mehr Singh, who died a year or two ago at the age of about 23 or 24. The dispute now lies between *Mussammat* Nihal Devi who is without question the legitimate widow of Maya Singh, presuming Mayo Singh is dead, and the sons of Maya Singh by his connection with *Mussammat* Alan.

The Collector who decided the question in the first instance found in favour of the sons of Maya Singh by *Mussammat* Alan. The Commissioner has reversed that finding and has found in favour of *Mussammat* Nihal Devi, the legitimate widow. For the sons of Maya Singh by *Mussammat* Alan it is alleged either that Maya Singh became a Mohammadan and was lawfully married to *Mussammat* Alan and therefore, these sons are legitimate and entitled to succeed or that Maya Singh remained a Sikh, but still was legitimately able to marry *Mussammat* Alan even though she did not

change her religion and even though the children of the union are now Mohammadans. For the respondent, *Mussammat* Nihal Devi, it is urged that the children are undoubtedly illegitimate, that no marriage is possible between a Sikh and a Mohammadan unless the Mohammadan becomes a Sikh, that there is no evidence that Maya Singh himself became a Mohammadan and that therefore, all the arguments on that basis fall to the ground. It will be seen that not only the facts but the custom and law, which is applicable to those facts are doubtful. The whole of this litigation is obviously a preliminary only to the more serious litigation, which will succeed whatever my decision now may be.

In deciding cases of mutation there is one sound rule, which should always be followed and that is to avoid as far as possible all intricate questions of law or custom. If a decision can be reached, which on the face of it is not inequitable without going into any intricate questions of law or custom or even of fact, it is better to come to that decision rather than to go into the whole maze of intricacies, which another decision might entail. This is the line, which has been taken by the Commissioner. There is one salient fact, which is not disputed and on which an equitable decision can be based. That fact is that *Mussammat* Nihal Devi is the widow of Maya Singh and as the widow of Maya Singh is entitled to succeed as a life tenant to Maya Singh's property : provided no one else has established a better claim. The question whether any one else can establish a better claim is one so full of intricacies that it had best be avoided in the course of these summary proceedings.

Therefore mutation should be effected in the name of *Mussammat* Nihal Devi and not in the name of the sons of Maya Singh by *Mussammat* Alan. For these reasons I support the Commissioner's decision and dismiss this appeal. The appellants will pay the respondent's costs in this Court. The pleader's fee will be fixed at Rs. 250.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 4 of 1925-26. (Decided on 31-3-1926.)

King, F. C.

PREM and others

Appellants

Versus

HIRA and another

Respondents.

Punjab Tenancy Act, S. 22 (1) (c)—the words "and his rent is not regulated by contract"—do not refer to a tenant under S. 6.

Held, that the words "and his rent is not regulated by contract" refer to occupancy tenants whose rights are established under S. 8, not to those whose occupancy rights are under S. 6.

Appeal from the decree of the Commissioner, Ambala Division.

ORDER.

In this case both the lower Courts are agreed that the tenant is a tenant under S. 6, but the Commissioner has lowered the malikana allowed by the trial Court from 8 annas in the rupee to 6 annas in the rupee. The tenant has appealed and the main ground of his appeal is that he is not liable to pay higher malikana than one anna in the rupee, which is what he was paying when the suit was brought, because, there was an agreement recorded at the Settlement of 1859 to the effect that a higher rent than was then fixed would not be taken.

The Vakil for the appellants has urged that in S. 22 of the Tenancy Act, sub-section (1), clause (c) the words 'and his rent is not regulated by contract' applied to tenants specified in S. 6 as well as to those who have established their claims to be occupancy tenants under S. 8. I do not agree with this interpretation. There is a comma after the words 'specified in S. 6' and no further punctuation till we get to the words 'by contract'. Thus clearly the words "and his rent is not regulated by contract" refer to occupancy tenants whose rights are established under S. 8, not to those whose occupancy rights are established under S. 6. There has been no argument to the effect that the tenants are not tenants under S. 6 and the only other plea urged is that the enhancement of malikana to 6 annas in the rupee is excessive.

Having regard to all the circumstances of the case, I do not think that this enhancement is excessive and I dismiss this appeal with costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 33 of 1925-26. (Decided on 31-3-1926.)

King, F. C.

HARNAM SINGH and another.

Applicants

Versus

R. S. RANA OPINDRA CHAND.

Respondent.

Punjab Land Revenue Act, S. 158 (2) (x)—Nazranah—suit for enhancement of—jurisdiction.

Held, that a suit for the enhancement of Nazranah is triable by a Revenue Court.

Appeal from the order of the Commissioner of Jullundur.

ORDER.

I was a little doubtful whether this case was or was not triable by a Revenue Court with respect to the item described as 'nazranah'. I find that, among the records of the previous litigation between the parties, there are the records of a case, which was decided on the 20th August 1889 and against which an appeal was filed, which was decided on the 13th December 1889. In the appeal the Collector begins his order by saying that the nazranah, sued for, is merely a head rent on the lands of Korala, which it pleases the Rana to describe as nazranah on the analogy of a royal grant." A petition for revision was made against this order and, among the grounds of that petition, it was alleged that the Revenue Court was not competent to hear the case regarding nazranah, and the judgment of the Deputy Commissioner was wrong in this respect. This ground of appeal was specially reserved for consideration; but the Financial Commissioner of the time, Sir Denzil Ibbetson, refused the petition for revision, thereby holding that suit for nazranah was triable by a Revenue Court.

I agree with that decision. The suit was between representatives of the same parties as are now suing; and the nazranah was the same in each case. It is obvious that the nazranah is a head rent and the suit is triable by a Revenue Court. Any suit for the enhancement of nazranah must consequently also be triable by a revenue Court. Thus there has not been any wrongful use of jurisdiction. This petition is, therefore, rejected.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side

Revenue.

No. 137 of 1925-26. (Decided on 24-4-1926.)

Barron, F. C.

PARMA NAND.

Applicant

Versus

RAM LAL and others.

Respondents.

Punjab Land Revenue Act, S. 36—change in entries—reasons thereof.

Held, that no change in previous entries can be effected by a Revenue Officer when reasons for the change are such as can only be gone into by a Civil Court.

Case forwarded by Commissioner, Multan, for the Financial Commissioner's orders.

ORDER.

As pointed out by the Commissioner of Multan, the reasons for making any change in the previous entry in the record are all reasons, which can only be gone into by a Civil Court, and cannot be decided by Revenue Officers in mutation proceedings. An alteration in the old entry by way of mutation could only be made with the consent of Parma Nand in whose name this shop site has stood for over 12 years. For the reasons given by the Commissioner, I accept this revision, and set aside the orders of the Collector and Naib-Tahsildar, and direct the old entry in favour of Parma Nand to be restored. Applicant will be given costs throughout.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue

No. 117 of 1925-26 (Decided on 28-4-1926.)

King, F. C.

MUHAMMAD GHAFOR.

Applicant

Versus

BALU.

Respondent.

Lambardar—succession—disqualification—minority—father dismissed for offence not involving moral turpitude—minor son may be appointed.

Where a Lambardar was dismissed for failure to report a small pox case that had occurred in his own house and which considerably spread the disease, held, that though the offence was serious and justified a dismissal yet it did not involve such moral turpitude as to justify the exclusion of all heirs from the post. Held further, that in such cases a minor son of the dismissed lambardar may be appointed with a substitute.

Revision from the order of the Commissioner of Rawalpindi Division.

ORDER.

The Collector has passed over the claims of Muhammad Ghafoor to succeed his father, the dismissed Lambardar, Kaman, on the ground that Muhammad Ghafoor, who is a minor of about 10 or 12 years of age, is under the influence of the dismissed headman to an undesirable extent. It is obvious that the minor must be under the influence of his father; and that, if

rule 17, clause (ii), sub-clause (b) of the Land Revenue Rules is interpreted as meaning that every headman, who has been dismissed, must exercise an undesirable influence over his sons, then no minor can succeed his father, who has been dismissed. I think that the intention of the rule is obviously not this. The effect would be to curtail greatly the discretion, which a Collector has, of appointing an heir to succeed a dismissed *Lambardar*. It might be held that the mere fact of dismissal makes the influence of the person dismissed over his minor son undesirable, and that might be held to be a reason for excluding a minor son. In deciding this case I look at it from two points of view.

1. Was the headman dismissed for so serious an offence as to justify the Collector in refusing to appoint any of his heirs? The offence for which the *Lambardar* was dismissed was that of neglecting to report an outbreak of small pox, of which he must have been aware, because, it happened in his own family. As a result of this neglect there was a considerable spread of the disease. Every one must admit that this offence was very serious and justified dismissal. I cannot agree that it involved such turpitude as to justify the Collector's refusal to appoint any of his heirs to succeed the dismissed man.

2. If it be argued that the minor Muhammad Ghafoor should be excluded, because, he is to an undesirable extent under the influence of the dismissed *Lambardar*, the answer is that some other heir, not under the influence of the dismissed *Lambardar*, should have been appointed. There is no great disqualification against any of the other heirs, which would justify dismissal if they had been *Lambardars*, and, consequently, there is no reason for passing them over. Even, therefore, if I hold that the Collector is right in deciding that the influence of the dismissed *Lambardar* over the minor Muhammad Ghafoor is undesirable, the only effect of such a conclusion would be to admit other heirs of the dismissed *Lambardar*.

After close consideration I think, it is better that the minor son should succeed his father. It will, of course, be necessary to appoint a substitute. With respect to this, I need only point out that the Collector has a free hand. He must consult the heirs of the *Lambardar*, but he is not necessarily bound to follow their advice. For these reasons I accept the petition for revision and appoint Muhammad Ghafoor to be *Lambardar* in place of his father, Kaman, who has been dismissed. The parties will pay their own costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 30 of 1925-26. (Decided on 28-4 1926.)

King, F. C.

LALA JASWANT RAI TANEJA.

*Appellant.**Versus*

CROWN.

*Respondent.***Punjab Land Revenue Act, Ss. 52 and 57—Assessment—
lease—amount of rent—g od test.**

(i) Held, that the fact that a person is able to lease his land for Rs. 200 plus the land revenue is very good evidence as to the correctness of the assessment of Rs. 81.

(ii) Held, that the Financial Commissioner should not disturb the arrangements regarding assessment recommended by a Settlement Collector, who had all the advantage of seeing the out-turn and the general condition of the land and wells.

Second Appeal from the order of the Commissioner of Multan.

ORDER.

Two appeals have been lodged by L. Jaswant Rai Taneja under S. 58 of the Land Revenue Act XVII of 1887. Both these appeals are against the order of the Settlement Collector distributing the assessment, so as to place a sum of Rs. 92 on the well called Kath Palianwala in Matoi estate, and Rs. 81 on Pirwala Nawan, and Rs. 85 on Pirwala Kohna wells in Rakba Nur Khan estate. Originally, the Settlement Collector assessed the Kath Palianwala well at Rs. 100, but on petition made to him, he reduced this amount by Rs. 8, fixing the assessment at Rs. 92. This Rs. 92 may be compared with the previous assessment of Rs. 119; and it will be seen that the Settlement Collector has made a considerable reduction. Even so the Commissioner has still further reduced the assessment to Rs. 81 on the recommendation of L. Diwan Chand, Settlement Collector, who succeeded Mr. Anderson, the Settlement Collector, who made the original assessment. For the Pirwala Nawan well, the appellant's objection was rejected by the Settlement Collector, Mr. Anderson, and also by L. Diwan Chand, who succeeded, and the appeal to the Commissioner has been dismissed. In the case of Pirwala Kohna, the objection to Mr. Anderson was dismissed, but, on the recommendation of L. Diwan Chand, the Commissioner has, on appeal reduced the assessment from Rs. 85 to Rs. 75.

Malik Feroz Khan Noon, who has argued the case before me, claims only a further reduction on Kath Palianwala to Rs. 71 from 81, on Pirwala

Nawan to Rs. 67 from 81, and on Pirwala Kohna to 73 from 75. He bases his arguments mainly on the fact that the Kath Palianwala and Pirwala Nawan wells are classed as being in the third grade while the Pirwala Kohna well is classed as being in the first grade. He also points out a discrepancy that whereas there has been a reduction on the former assessment of Kath Palianwala and Pirwala Kohna, there has been an enhancement of Rs. 7 on Pirwala Nawan.

I have read carefully the arguments set forth in the grounds of appeal and I have also listened with attention to Malik Feroz Khan Noon. Lala Diwan Chand, Settlement Collector, has gone into the matter very thoroughly and has dealt with all the grounds of appeal in spite of the fact that it is alleged that he has not gone into them. The present state of these wells is undoubtedly bad, but the owner has not paid that attention to them, which would ensure their being properly cultivated. He or his agent alone are to blame for the present state of affairs. Nevertheless, in spite of this neglect, it has been shown by L. Diwan Chand that the appellant has actually leased the Kath Palianwala well for 4 years at the rate of Rs. 200 per annum plus the land revenue. The appellant replies to this that he has not received any money under the lease. It is not clear what efforts the appellant has made to recover his dues, but, whether he has received the rent or not, one cannot suppose that he is so foolish as to have leased the land without some security that he was likely to receive the rent. He has a cause of action, if the rent is not paid to him; and I should think; he may be trusted to see that he obtained his rights. I think, L. Diwan Chand's argument that the fact that the appellant has been able to lease his land for Rs. 200 plus the land revenue is very good evidence as to the correctness of the assessment of Rs. 81, which he has proposed for this well. This is a reduction of Rs. 11 on the sum finally assessed by the Settlement Collector, Mr. Anderson, and his reduction has been allowed by the Commissioner. I do not think any further reduction is required as far as the Kath Palianwala well is concerned and I dismiss the appeal.

I turn now to the assessment of the two wells, Pirwala Nawan and Pirwala Kohna, in the estate of Raqba Nur Khan. Here again the Settlement Collector, L. Diwan Chand, has most carefully calculated the outturn of the wells. The only criticism, I have to offer, is that he has rated the Pirwala Kohna rather lower than it should be rated. The outturn of wheat on that well might have been estimated at $8\frac{1}{2}$ maunds per acre instead of 8 maunds an acre, which is the rate assumed by Lala Diwan Chand. I do not agree with the argument used by counsel that, because 8 maunds per acre has been assumed for Pirwala Kohna instead of an actual average outturn of 9 maunds 2 seers, therefore something less than 8 maunds per acre should be assumed for Pirwala Nawan where the actual

average outturn is 8 maunds 28 seers. The Commissioner, acting on L. Diwan Chand's report, has reduced the assessment of Pirwala Kohna from Rs. 85 to Rs. 75. But, if the actual average yield of wheat of Pirwala Kohna be taken into consideration, the assessment of this well should not be less than Rs. 81. (This figure is obtained by adding one maund of wheat per acre at Rs. 2-8-0 to the produce estimate, framed by the Settlement Collector in paragraph 3 of his note dated the 7th September 1925). Probably, a fairer result would be obtained by raising the assessment of Pirwala Kohna to Rs. 81 and reducing that of Pirwala Nawan to Rs. 75. But I am unwilling to disturb the arrangements recommended by the Settlement Collector, who has had all the advantage of seeing these wells. I think, he has made out a good case against further reduction, and I therefore dismiss this appeal also.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 4 of 1925-26. (Decided on 28-5-1926.)

King, F. C.

MOTI RAM and another,

Petitioners

Versus

SADIQ MUHAMMAD.

Respondent.

Punjab Alienation of Land Act, S. 7 (5)—Execution of decree—alienation of land of an agriculturist judgment-debtor not a mortgage under S. 6—Collector debarred from proceedings under S. 7 (5).

Held, that, where land has been alienated temporarily by order of a Civil Court, such alienation is not a mortgage in the form prescribed by S. 6 (1) (a) of the Alienation of Land Act. It is rather in the nature of a lease, and, as such action cannot be taken by a Deputy Commissioner to vary the terms for which the alienation has been sanctioned under S. 7 (3) and (5) of the Alienation of Land Act. 2 P. R. 1917 (Rev.) referred to.

Revision from the order of the Commissioner of Multan.

ORDER.

My order of 18th May 1926 will be read as part of this order. I have considered the Revenue judgment cited, *Sultan v. Lakh Ram* (1), and find that it is not relevant to the point raised by me, which is, whether a Deputy Commissioner can take action under S. 7 (5) of the Punjab Alienation of Land Act, 1900, when land has been alienated temporarily by a Civil Court. I am very definitely of opinion that the Deputy Commis-

(1) 2 P. R. 1917 (Rev.)

sioner cannot take action under S. 7 (5), because, a temporary alienation of land by order of a Civil Court is not a mortgage in one of the forms described in S. 6 of the Punjab Alienation of Land Act. In the particular case now under consideration, the transaction appears to have been described as a mortgage. but that is a misdescription, and does not affect the action to be taken.

I accept this application for revision, and I cancel the order of the Deputy Commissioner of Multan, dated the 16th September 1925, directing the redemption of the land. The parties will pay their own costs throughout.

Application allowed.

The order dated 18th May 1926, referred to above is as follows:—

"In this case the mortgagor was the judgment-debtor, the amount due from him being apparently Rs. 2,700 with costs. The decree was passed apparently in 1909. The Civil Court if it followed the ordinary procedure must after attachment of the judgment-debtor's immovable property have referred the case to the Collector and the Collector after full consideration of the circumstances must have reported to the Civil Court that a temporary alienation of the land for 20 years would suffice to meet the requirements of the case. Unfortunately the papers which would make plain what was done appears to have been destroyed. All that we know is, that in pursuance of civil litigation the land now in dispute was handed over to the mortgagee for a period of 20 years in full satisfaction of the mortgage debt and the costs of the litigation.

The Deputy Commissioner has treated this temporary alienation as a mortgage and, acting under S. 7 (3) and (5) of Alienation of Land Act, has decided that the mortgagor has repaid the full amount of his debt to the mortgagee and has directed the ejectment of the mortgagee. The Commissioner has confirmed the action of the Deputy Commissioner.

I think that this view of the case is wrong. The temporary alienation, although, it may have been described as a mortgage in the revenue paper, is really in the nature of a lease for a period of years, the rent being the judgment-debt which has previously accrued. It is not a mortgage under S. 6 (1) (a) of the Alienation of Land Act and it cannot be dealt with under section 7 (3) and (5). To allow it to be dealt with under these two sub-sections would be in my opinion to allow the Deputy Commissioner to interfere with the order of the Civil Court. It further involves the anomaly of allowing the Deputy Commissioner to vary the decision reached by his predecessor acting as a Collector. For these reasons, I am of opinion that where land has been alienated temporarily by order of a Civil Court, such alienation is not a mortgage in the form prescribed by S. 6 (1) (a) of the Alienation of Land Act. It is rather in the nature of a lease; and, as such, action cannot be taken by a Deputy Commissioner to vary the term for which the alienation has been sanctioned under S. 7 (3) and (5) of the Alienation of Land Act.

"Before finally deciding this matter I wish to know if there are any revenue ulings on the subject. In particular I should like to see 2 P. R. 1917 Rev."

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 90 of 1925-26. (Decided on 1-6-1926).

King and Barron, F. Cs.

JAIMAL

*Applicant**Versus*

MURARI LAL

*Other Side.***Punjab Tenancy Act, Ss. 84 and 82—revisional powers of Financial Commissioner.**

Held, that a Financial Commissioner can no more revise the order of a past Financial Commissioner in accordance with S. 84, than he could revise the order of his colleague. Held also that S. 82 does not come into operation except when a Revenue Officer, who is not acting as Revenue Court, wishes to modify or reverse an order passed by another Revenue Officer who is also not acting as a Revenue Court.

Punjab Tenancy Act, S. 8.—nature of rights under.

Held, that Ss. 5 and 6 lay down definitely the conditions under which a tenant may obtain occupancy rights under the Punjab Tenancy Act. S. 8 is a general section, which enables a tenant to establish occupancy rights on any ground not specified in Ss. 5 and 6, that is to say, on any ground not specified in the Act.

Case forwarded by Commissioner of Jullunder Division.

ORDER.

King, F. C.—The Commissioner of Jullundur has forwarded these records to me and has asked me to exercise my revisional powers with respect to an order passed by my predecessor, Mr. Elsmie, on the 11th of June 1888. The Commissioner has not stated in his order the law under which he asks me to exercise my powers of revision; and, as there seems to be some slight misunderstanding as to the respective scope of the powers of revision and review, I must go into the matter in some detail.

The only Revenue Officer or Revenue Court, empowered to revise orders, is the Financial Commissioner. If a Commissioner or Collector thinks an order should be modified or reversed, he cannot, unless he is seized of the case as an Appellate Court, modify or reverse the orders himself. He is only empowered to call for the records and to submit them with his opinion for the orders of the Financial Commissioner, so also the Financial Commissioner is empowered to call for records of any case pending before any Revenue Officer or Revenue Court subordinate to him, and, after examining the records, if he deems it expedient to interfere, he may, on any ground on which the High Court, in the exercise of its revisional juris-

diction, might have interfered, interfere and pass such order as he thinks fit on the case after hearing the parties. It is important to note that under S. 84 of the Punjab Tenancy Act, XVI of 1887, the Financial Commissioner can only call for the records of a Revenue Officer or Revenue Court subordinate to him. He cannot call for the records of a case pending before or disposed of by a Financial Commissioner. As regards pending cases, it is obvious that the Financial Commissioners being co-equal, it would be absurd to suggest that one could call for the records of a case ending before the other; and, if the case is pending before himself, there is no necessity to call for the records, because, he is already seized of the case. As regards, the records of cases, which have already been disposed of and which are consequently not pending, the position seems to me to be exactly the same. A Financial Commissioner can no more revise the order of a past Financial Commissioner in accordance with S. 84 than he could revise the order of his colleague. Section 84 makes the matter quite clear. It lays down that the Financial Commissioner can only call for the record of any case pending before a Revenue Officer or Revenue Court subordinate to him, it follows then that S. 84 of the Punjab Tenancy Act is not applicable to the present proceedings. I have no revisional powers under that section with respect to orders passed by my predecessors.

It may be argued that although S. 84 does not apply, S. 82 enables me to take action in this case. The procedure under S. 82 is somewhat similar to the procedure under S. 84. It must be noted, however, that S. 82 applies only to Revenue Officers and not to Revenue Courts. Sub-section (1) of S. 82 clearly says "A Revenue Officer, as such, may either of his own motion or on the application of any party interested" and so on. The words: "A Revenue Officer, as such," emphasise the fact that a Revenue Officer, acting as a Revenue Court, is not empowered to take action under this section. Section 77 (1) says that, when a Revenue Officer is exercising jurisdiction with respect to any suit such as described in sub-section (3), he shall be called a Revenue Court. In the exercise of such jurisdiction, he is not acting as a Revenue Officer. It follows, therefore, that S. 82 cannot be applied except when a Revenue Officer, who is not acting as a Revenue Court, wishes to modify or reverse an order passed by another Revenue Officer, who is also not acting as a Revenue Court.

As this matter has been brought to my notice, I think it necessary to point out to the Commissioner that S. 8 of the Punjab Tenancy Act is not of the same nature as Ss. 5 and 6 of that Act. Sections 5 and 6 lay down definitely the conditions under, which a tenant may obtain occupancy rights under the Punjab Tenancy Act. Section 8 is a general section, which enables a tenant to establish occupancy rights on any ground not specified in Ss. 5 and 6, that is to say, on any ground

not specified in the Act. To say that a tenant has rights under S. 8 is, therefore, to a certain extent meaningless. It does not in the least describe what the nature of his rights is, or how he has obtained those rights. A tenant can establish right of occupancy in a variety of ways, the only condition being that he shall not acquire a right of occupancy by mere lapse of time (S. 9). The statement of my predecessor, Elsmie, F.C., quoted by the Commissioner that the rights of the tenant in the case before him were not under S. 8 but were outside the Act (not the present Act as stated by the Commissioner, but the Act of 1868—see the judgment) means nothing more than that S. 8 by itself does not lay down conditions for the acquirement of rights of occupancy such as are laid down by Ss. 5 and 6. In other words, the quoting of S. 8 as a source of a right of occupancy is without meaning. The final sentence of the order of Elsmie, F. C., is "The ground of the decree being that plaintiffs are tenants with a right of occupancy by virtue of the order of 1862 and are, therefore, not liable to ejectment—S. 20 of Act XXVIII of 1868." I interpret this judgment to mean that the tenants had established a right of occupancy in consequence of Mr. Gouldsbury's order, but that that right was a right extraneous to the Act of 1868 as it is to the Punjab Tenancy Act, XVI of 1887. Such a right of occupancy would, however, in consequence of the saving S. 8, be a perfectly valid right.

As this order deals with questions of considerable importance, I shall be glad to have my colleague's concurrence.

Barron, F. C.—I concur.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 6 of 1925-26. (Decided on 15-7-1926.)

King, F. C.

MAHTAB SINGH and others

Appellants

Versus

HAUNSU and others

Respondents.

Canal—Kuhl in Kangra District.

Held, that in Kangra District, a kuhl, when fed by a certain natural channel is a canal.

Appeal from the order of the Commissioner of Kangra.

ORDER.

In this case, the plaintiffs claim to have exclusive rights to all the water in the Dakre-di-Kuhl. It is admitted that the Kuhl Karolan is a part of Dakre-di-Kuhl, and the first question for decision is, whether the Kuhl Karolan is a water course or whether it is a canal. The Original Court and the lower appellate Court have evidently both treated the Kuhl Karolan as being a canal; but I am by no means sure that it can be so described. In Notification, No. 36, dated the 20th March 1907, the Kangra Kuhls, fed by certain natural channels, are called canals. Therefore, the Kangra Kuhl fed, by the Baner natural channel, but, would be a canal. Can it be said that Kuhl Karolan, which has its head not in the Baner Channel, but in the Dakre-di-Kuhl, is itself a canal. In the case of *Nil Kanth and others v. Beli Ram and another* (1), it has been held by this Court that the term 'canal' must be restricted to Kuhls directly fed by the natural channels notified in the notification cited. After further consideration, I am of opinion that that decision was a right decision and I am not disposed to vary it in this case. The point was not, however, raised before the lower Court and for that reason I have permitted discussion on the general question, whether the plaintiffs are or are not entitled to exclusive rights of irrigation from the Kuhl Karolan.

After hearing arguments of both sides, I am of opinion that, even on the merits of the case, it would be wrong for me to interfere with the order of the lower appellate Court. The pleader for the appellants has stated before me that he did not claim exclusive rights. He was quite content that the defendant should take surplus water from the fields irrigated from the Kuhl Karolan. This claim is widely different from the claim, which he made originally and practically admits the right of the defendants to use the surplus water of the Dakre-di-kuhl canal; the only dispute being whether that surplus water shall reach the defendants through the fields of the plaintiffs or through the Kuhl Karolan. In either case, it must be conveyed over the Raj Nala by means of some sort of pipe or channel such as a *Parnala*. The argument, given in the judgment of the lower appellate Court, have convinced me that the defendants in the past have actually taken water from the Kuhl Karolan; and I, therefore, uphold the decision of the lower appellate Court. I think that the plaintiffs are responsible for this litigation and I order that they shall pay all the costs.

Appeal dismissed.

(1) Revision No. 103/2 of 1925-26.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 79 of 1925-26. (Decided on 15-7-26.)

C. M. King, F. C.

ALLAH DIYA

Applicant

Versus

KARIM BAKHSH and others

Respondents.

Punjab Tenancy Act, Ss. 84 and 24 (3) (a)—suit for enhancement of rent—Premature—Court's failure to notice—revision.

A suit for enhancement of rent was barred under S. 24 (3) (a) of the Punjab Tenancy Act, as it was not brought within 10 years period allowed under the above section. The Lower Courts failed to notice the above fact. Held that it was sufficient cause for interference on revision.

Appeal dismissed by the order of Commissioner of Ambala.

ORDER.

The first ground of revision is a good one. Both the lower Courts have failed to notice that the present suit has been instituted within the 10 years' period allowed under S. 24 (3) (a) of the Tenancy Act, and consequently, that under that clause the suit is barred. I, therefore, accept this petition and, varying the order of the lower Courts I dismiss the suit. The plaintiffs will pay all the costs throughout.

Petition allowed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 76 of 1925-26. (Decided on 15-7-1926.)

King, F. C.

SIRAJ-UD-DIN and others.

Applicants.

Versus

DIT MAL and others.

Respondents.

Punjab Tenancy Act, Ss. 68 and 84—Compensation—question raised in trial and appellate Courts—no decision by either—illegality—interference on revision.

Where the issue as to compensation for the sinking of a well was raised both in the trial and the appellate Courts without any decision by either on the point, held, S. 68 was imperative and the lower Courts had committed an illegality justifying interference on revision. 7 P. R. 1902 (Rev.) referred.

Revision from the order of Commissioner of Lahore.

ORDER.

The sole question for decision in this case is that mentioned in my order of the 8th May 1926. The issue as to compensation for the well which had been sunk was distinctly raised before the trial Court, but no decision had been reached by the trial Court, was brought to the notice of the lower appellate Court, but again the lower appellate Court does not seem to have noticed this ground of appeal.

The provisions of S. 68 are imperative. This interpretation of the law has already been given in the case of *Natha Singh v. Bura and another* (1) I entirely agree with that interpretation. There has, therefore, been an illegality, which justifies my interference as a revising authority. I, therefore, accept this petition for revision and direct the lower appellate Court to decide this question of compensation either itself or after reference to the trial Court. The cost of this petition will follow the final result.

Petition accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Appellate

Revenue.

No. 5 of 1925-26. (Decided on 16-7-1926).

King, F. C.

GAHYA

Appellant

Versus

DEVI DAS

Respondent.

Punjab Tenancy Act, S. 5 (1) (a)—occupancy rights—acquisition of—by transferee of rights of tenant fulfilling condition under S. 5 (1) (a).

Where the descendants of a vendor of occupancy rights in a land, could be deemed, at the time of suit for ejectment, to have fulfilled the conditions under S. 5 (1) (a) but for the sale of such occupancy rights by their predecessor-in-interest, held, that the descendants of the vendees who had continuously occupied the land since the

(1) 7 P. R. 1902 (Rev.)

sale, must be considered to have acquired the status of occupancy tenants under S. 5 (1) (a).

Appeal from the order of the Commissioner of Jullundur.

ORDER.

There is no dispute as to the facts of this case and the only question is as to the application of the law. It is admitted that the father of the present defendant bought the occupancy rights from one, Jowahar, in 1884. It is also admitted that Jowahar had been recorded as an occupancy tenant in 1850 and it is also admitted finally that, ever since 1850 down to the present time, no rent has been paid for this land other than land revenue and cesses thereon. The question is whether the present defendant is to be treated as having occupancy rights under S. 6 (1) (a) of the Tenancy Act or under S. 6 of the Act. This question turns on the effect of sale by Jowahar in 1884. It is admitted that if that sale had not taken place and if the descendants of Jowahar had now been in occupation of this tenancy, then the presumption, allowed in S. 5 (2) of the Act, would, undoubtedly, be applicable with the result that the descendants of Jowahar would undoubtedly be treated as tenants under S. 5 (1) (a); or, at any rate, so strong a presumption would be raised in their favour that it would be difficult for the plaintiffs to rebut it. Does the mere fact, that Jowahar sold his rights in 1884, deprive the vendee of the benefits of the presumption, which can be raised under S. 5 (2)? I have been referred to the judgment of Sir Micheal Fenton, Financial Commissioner, in the case of *Polar* against *Khayali* (1). The learned pleader for the appellant (Plaintiff) urges that my predecessor has held that "the requirements of S. 5 (1) (a) as to continuous occupation of the land by more than two generations in the male line, concern only the tenant in occupation at the commencement of the Act." From this he argues that as it is not denied that the tenant in occupation at the commencement of the Act in 1887 was Hira Mal, the father of the defendant, and as he had occupied the land only for 3 years and not for more than two generations in the male line, therefore, he does not fulfil the requirements of S. 5 (1) (a).

I am of opinion that, when Sir Michael Fenton gave this dictum, he was considering only the tenant in occupation by inheritance. He did not consider the question of the tenant in occupation by purchase. That point was not raised before him; and it would be a misinterpretation of his dictum to apply it in the case of any one but the tenant by inheritance. In the case now under consideration, I think that a broad view must be taken. What was it that Hira Mal purchased from Jowahar in 1884? Obviously he purchased the right of occupancy which Jowahar had and it seems equally obvious that as Jowahar had not paid anything but the land

revenue and cesses thereon, Hira Mal purchased from Jowahar the right to occupation free of all rent except the land revenue and cesses. It must be noted that sale by Jowahar to Hira Mal has not been disputed in any way and that, from the date of the purchase right down to the present date, Hira Mal and his son have occupied the land not paying any rent therefor other than land revenue and cesses. In view of these facts, it seems to me that Hira Mal must be treated as occupying the place of Jowahar. It is clear also that the land owners acquiesced in this situation, which had been created by the sale.

Thus in deciding the question whether or not the defendant is to be treated as an occupancy tenant under Section 5 (1) (a), we must treat him as if he were actually Jowahar or a descendant of Jowahar, the original vendor, and, if Jowahar, or his descendant would not have acquired occupancy rights under S. 5 (1) (a), then we can fairly say that those rights have also been acquired by the descendant of Hira Mal. It is admitted, as has already been said, that if no sale had taken place, the descendant of Jowahar would now be entitled to occupancy rights under S. 5 (1) (a). Therefore, the descendant of Hira Mal is entitled to those rights. For these reasons, I agree with the Commissioner and I dismiss this appeal with costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 156 of 1925-26. (Decided on 27-10-1926).

King, F. C.

MIRZA and others

Applicants

Versus

KANSHIA

Other Side.

Punjab Tenancy Act, S. 100—case to be dealt with by Civil Court—Collector to take action under.

If the Collector thinks the case is one which should be dealt with by a Civil Court and not by a Revenue Court, his proper course is to take action under S. 100.

Case forwarded by the Commissioner of Ambala.

ORDER.

The facts are stated in the order of the Collector, dated 15th May 1926. If the Collector thinks the case is one which should be dealt with by a Civil Court and not by a Revenue Court, that is to say, if the Revenue

Court has made a mistake in jurisdiction; his proper course is to take action under S. 100 of the Punjab Tenancy Act 1887. This is what the Commissioner has indicated that he should do. I am not prepared to take any action under S. 84 (3) of the Punjab Tenancy Act. The petition will be returned to the Collector for him to take action under S. 100 if he deems it necessary to do so. No order as to costs.

Case returned.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue

No. 7 of 1925-26 (Decided on 21-8-1926).

Barron, F. C.

NAU NIHAL SINGH

Appellant

Versus

MANGAL SINGH

Respondent.

**Lambardar creation of new post—appointment of a second
Lambardar—increase of work.**

Where there was a need of a second Lambardar in a village and the candidate for the post was owner of half the village with a separate abadi for his tenants, held, that the candidate was entitled to appointment, especially in view of the fact that his rival, who though a Lambardar in an adjoining village, owned very little area in the village under consideration.

Appeal from the order of the Commissioner of Lahore.

ORDER.

After hearing Counsel on both sides in this case I reserved orders in order to give a considered judgment as the case is one which may possibly be quoted as a precedent.

The appeal is concerned with the appointment of a second Lambardar in the estate of Mananwala Judh Singh in the Sheikhpura District. Hitherto this estate consisting of about 160 squares of land has had only one Lambardar Sardar Nau Nihal Singh, the appellant. On the report of the Settlement Officer dated the 17th February 1925, the Commissioner of Lahore sanctioned the appointment of a second Lambardar for the village and the Settlement Officer thereupon on 15th April 1925, appointed Sardar Mangal Singh the respondent in this appeal. Against this order Sardar Nau Nihal Singh has appealed.

Here I may note that a preliminary objection taken by Counsel for the respondent to the effect that the appeal is time-barred as it is one against the Commissioner's order of 14th March 1925, was ruled out by me on the ground that the appeal is, as a matter of fact, against the Settlement Officer's order of 15th April 1925, appointing the new Lambardar. Until that order was passed no effective appeal could be lodged against the Commissioner's order.

The parties to this case both belong to the same family, the famous Mananwala of Mughal Chak, and the respondent Sardar Mangal Singh is actually the grandson of Sardar Jodh Singh after whom this estate of Mananwala Jodh Singh is named, while Sardar Nau Nihal Singh being the grandson of Sardar Kirpal Singh is the head of this branch of the Man family.

The Settlement Officer's report recommending the creation of a second *lambardari* in the village is rather involved. He points out that the *Pichotra* of the village had in the past amounted to about Rs. 1,000 and would increase to nearly Rs. 1,600 owing to re-assessment and increase in *Abianz*. This increase would not by itself be a sufficient reason for increasing the number of *lambardars*, nor is the reason given by the Settlement Officer that an extra *lambardari* should be created in the interests of the applicant Sardar Mangal Singh of any greater force. Neither of the two sardars lives in the Mananwala Jodh Singh, and both have large interests elsewhere and employ agents to look after their property in this estate. Neither therefore gains any advantage from this fact. But the fact remains that Sardar Mangal Singh owns a solid block of 80 squares out of the 160 squares in the estate, and has a separate *abadi* on this property. Sardar Nau Nihal Singh, who has hitherto been the sole *Lambardar*, only owns $2\frac{1}{2}$ squares in the estate, and is also *Lambardar* of a sister village Mananwala Nar Singh, one of five villages formed out of the original village of Mananwala, and also of two other villages. He is, therefore, fully occupied elsewhere, and has no real reason to grudge sharing the management of this estate of Mananwala Jodha Singh with Sardar Mangal Singh. The fact that the latter owns half the village, and has separate *abadi* for his tenants, the estate being thus really practically divided into two *pattis*, is sufficient justification for appointing a second *Lambardar* in the estate, and for that post Sardar Mangal Singh is obviously the right man to be appointed. For these reasons I uphold the orders of the Settlement Officer and the Commissioner, and dismiss this appeal with costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 249 of 1925-26. (Decided on 7-10-1926).

King and Barron, F.Cs

MUGHLA and another

Applicants

Versus

CROWN

Other side.

Northern India Canal and Drainage Act, Ss. 77 and 33, rules 32 and 33—breach of canal—flooding of lands—penalty.

Where the lands of some people were flooded by an intentional breach of a canal, held, that those whose lands were flooded were liable to pay the penalty under rule 32 framed under S. 75 and that neither rule 33 nor 33 was applicable to the case.

Revision from the order of the Commissioner of Lahore.

ORDER.

King, F. C. (1st October 1926.)—There is a point of law raised in these petitions which I find very difficult to decide. The facts as held to be proved are that the main canal Jhang Branch was intentionally breached by some person or persons unknown. As a result a very large area of land belonging to different persons was flooded. The Executive Engineer has treated the case as falling under S. 33 of the Northern India Canal and Drainage Act, and has imposed a penalty as permitted by rule 33 of the rules framed under S. 75 of the Act, for the unauthorized use of water. The Commissioner to whom an appeal was made has apparently decided (it is not very clear if this is really his decision or not) that S. 33 of the Canal and Drainage Act is not applicable, but that rule 33 is applicable.

I am quite clear in my mind that S. 33 of the Act does not apply. That section definitely restricts the punitive rate water supplied through a water-course. Under S. 33 certain persons are to be liable to pay certain charges if they use water supplied through a water-course in an unauthorized manner. Now it is clear that the water which flooded the lands, the owners of which have been subjected to these additional charges, never passed through a water-course. It came directly from the canal. Therefore S. 33 of the Act is inapplicable. Does rule 33 of the rules made under S. 75 of the Act take us any further? The Commissioner thinks it does, and has held that the rule is of general application. I am very doubtful if this is so. As far as I can judge at present rule 33 is intended only to supplement the provisions of S. 33. No additional charge can be made under rule 33 which is not contemplated by S. 33 of the Act. It may seem to be ridiculous that an additional penalty can be imposed for the comparatively trifling offence of breaching a water course, whereas the far more serious offence of breaching a canal does not subject the offender to the imposition of punitive rates, but if rule 33 were the only rule dealing with the matter I would, I think, hold that that was the law. There is, however, another rule which may cover this case. Rule 32 prescribes that persons irrigating from a canal without permission shall be chargeable with a punitive rate. The question then comes to this. Can all the persons whose lands were flooded be treated as persons irrigating from the Canal? I have no hesitation in answering this question affirmatively.

The final result is the same, because the punitive rates which can be imposed under rule 32 are as far as I can see the same as those which can be imposed under rule 33.

Before finally deciding the matter I would like to have the advice and concurrence of my colleague.

C. A. Barron, F.C.—(5th October 1926)—I concur in the finding that the proper rule to apply in this case is rule 32 and not rule 33.

C. M. King, F.C.—(7th October 1926)—I dismiss this petition for the reasons given in my order of 1st October 1926.

Petition dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 65 of 1925-26. (Decided on 6-11-1926):

Barron, F. C.

NAJAF SHAH

Appellant

Versus

DEWAN BAHADUR DEWAN DAULAT RAM

Respondent.

Lambardar, appointment of—person holding the largest share in mauza—the fittest for appointment.

A person who not only holds the largest share in mauza, but is the only person in it with a proprietary status is the fittest to be appointed a Lambardar.

Appeal from the order of the Commissioner of Rawalpindi.

PRELIMINARY ORDER.

I have heard counsel on both sides at length. This is a somewhat unusual case, and as the appointment of Lambardar, which has now been made, is a permanent one replacing the temporary arrangements, which have been in force for the last 9 years, I reserve my order until I have an opportunity of examining the file in which the respondent D. B. Daulat Rai was allowed to purchase the land in this mauza, Bir Baran, formerly held by the previous Lambardar Abnashi Ram. The file containing these papers should be put up at an early date.

FINAL ORDER.

In continuation of my past order above, I have now examined the relevant papers. I find that early in 1925 Government agreed to sell to D. B. Daulat Rai 504 acres of land in Rakh Bir Barar which had formerly been cultivated on annual leases by his brother-in-law Abnashi Ram, the ex-lambardar, in whose place this appointment is now being made. The purchase money is being paid in ten sanctioned instalments. This area represents 9-16ths of the area of the Rakh, the remainder of which is held on annual leases by the

other resident cultivators, Ram Jowaya, Najaf Shah etc. D. B. Daulat-Rai, therefore, not only holds the largest part of the *mauza*, but is the only person in it with a proprietary status. He is clearly the fittest person to be appointed lambardar on a permanent footing, and the Commissioner's order was fully justified. The D. B. must appoint a suitable resident Sarbarah. This appeal is dismissed with costs.

Appeal dismissed.

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side

Revenue.

No. 158 of 1925-26. (Decided on 27-10-1926.)

King, F. C.

RUP RAM

Applicant

Versus

SADA SUKH

Other side.

Punjab Tenancy Act, S. 82—Procedure—suit for occupancy rights—dismissal by Assistant Collector—Appeal to the Collector and remand—new Assistant Collector—whether can vary predecessor's order—right of appeal—if open to parties.

Where a suit for occupancy rights was dismissed by the Assistant Collector and the dismissal was appealed against to the Collector who remanded the case to a new officer who has succeeded to the post, and the new Assistant Collector, instead of submitting a report to the Collector, varied his predecessor's order, held, that he had no jurisdiction to vary his predecessor's order. Held, further that the original order of the Assistant Collector should be treated as a report to the Collector and the Collector's order of confirmation as an acceptance of the report and that the right of appeal should be open to the parties.

Petition for revision of the order of the Commissioner of Jullundur.

ORDER.

The Assistant Collector, who originally tried this case, dismissed the suit for occupancy rights. That order was appealed against to the Collector, who on the 18th July 1924 framed an issue and directed the lower Court—the trial Court—to give a decision on that issue. The trial Court gave a decision on the issue, but instead of its decision taking the form of a report to the Collector, which it should have been done, it took the form of an order, giving the plaintiff occupancy rights. That is to say, the Assistant Collector in his order of the 24th March 1925, varied the decision of the Assistant Collector in his order of the 14th March 1924. Of course he had no jurisdiction to do this. That is why this petition for revision can be heard by me.

The Collector, on the 29th October 1925, passed an order, confirming the order of the Assistant Collector, dated 24th March 1925. There also he does not seem to have noted the fact that one of the grounds of

appeal was the fact that the Assistant Collector had wrongly passed his order of the 24th March 1925.

The best method of unravelling the tangle is to treat the order of the 24th March 1925 as a report to the Collector and to treat the Collector's order of the 29th October 1925, as an acceptance of that report, that is to say, the Collector's order of the 29th October 1925, will be treated as an order, accepting the appeal against the original order of the Assistant Collector, dated the 14th March 1924. The result will be to allow the respondent before the Collector, *i.e.* the present petitioner, to have an appeal to the Commissioner.

I, therefore, direct that this shall be done. The Collector's order of the 29th October 1925 shall be treated as accepting the appeal against the order of the Assistant Collector dated the 14th March 1924, and a further appeal will lie to the Commissioner. The costs will follow the result.

Appeal accepted.

LAHORE HIGH COURT.

Appellate

No. 1352 of 1922. (Decided on 8-5-1926).

Civil.

Harrison and Dalip Singh, JJ.

JIWAN DAS *Appellant*
Versus

SHER MUHAMMAD KHAN *Respondent.*

Punjab Tenancy Act, S. 77 (3)—Contract of lease substituted by a new contract creating relationship of creditor and debtor—suit is triable by a Civil Court.

Where the liability arose out of the existence of the original lease and the relation of landlord and tenant between the parties, the old contract having been terminated and superseded, and a new contract substituted, the relation became that of creditor and debtor, and the suit was rightly instituted in the Civil Court.

Second appeal from the decree of District Judge, Shahpur, at Sargodha.

Appellant :—by Mr. Nanak Chand.

Respondent :—by Mr. Badri Das.

JUDGMENT.

Harrison, J.—Two separate suits were brought by Khan Bahadur Malik Sher Muhammad Khan against two persons, Jiwan Das and Diwan Chand, to recover definite sums of money. Both suits have been decreed and both the judgment-debtors have appealed. The appeal of Diwan Chand has been compromised and that of Jiwan Das alone remains.

The facts are simple enough. Three men, of whom Jiwan Das

was one, jointly, took a lease for a large area of land for a period of seven years from the plaintiff. After three harvests had been reaped, the lease was ended by mutual consent. A document was executed by the defendant Jiwan Das, in which he acknowledged unconditionally his liability to pay a sum of Rs. 1,849-14-3. Another document was also executed in favour of the plaintiff. The suit was originally instituted on the basis of the acknowledgment. It was subsequently withdrawn with permission to bring a fresh suit, and a fresh plaint was presented upon the other document. This was never amended but the plaintiff was permitted to proceed as if his suit had been in the original form. Issues were framed accordingly and no objection was raised on this point before the District Judge, the parties having understood throughout the basis on which the litigation was proceeding. We do not allow the objection now raised on this point.

It was held by both the lower Courts that the suit was competent, that there had been a novation of contract, and that the suit was not barred by limitation. A decree was accordingly given. On second appeal, the only points for us to decide are whether the suit was cognizable by Civil Court and whether it was within time. Mr. Nanak Chand contends that once there has been the relation of landlord and tenant between the parties and the money has become due as rent no subsequent transaction can alter the nature of the debt and make it the subject matter of a suit cognizable by a Civil Court. Mr. Badri Das, on the other hand, relies on the facts of this particular case. He explains that originally the three tenants were jointly and severally liable and, in accordance with the terms of the lease, Rs. 500 earnest money had to be paid in advance and accounted for at the end of seven years on the termination of the lease. The result of the agreement was (1) the lease was ended, (2) the liability was apportioned, and (3) the earnest money which had not been paid was added to the liability and divided between the three original tenants. He contends, and in our opinion rightly, that this cannot be held to amount to anything short of a complete novation of contract creating an entirely new liability. Although it is true that the liability arose out of the existence of the original lease and the relation of landlord and tenant between the parties, the old contract having been terminated and superseded and a new contract substituted, the relations became that of creditor and debtor, and the suit was rightly instituted in the Civil Court.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision side

Revenue

No. 185 of 1925-26. (Decided on 28-10-1926)

King, F. C.

KHALAS KHAN

*Applicant**Versus*KARAM DAD.....*Other side.*

Lambardar—Appointment of—man serving as patwari—Collector's powers in regard to appointment.

The Collector may refuse to appoint a person on any ground which would necessitate or justify the dismissal of that person from the office of headman. There is no bar to the appointment of a patwari as a lambardar.

Petition for revision of the order of Commissioner of Rawalpindi.

ORDER.

22nd June, 1926—The Collector does not seem to me to have fully appreciated the effect of rule 17 (ii) (c). The questions for decision are (i) Is Khalas Khan financially embarrassed to such an extent as would have justified his dismissal from the appointment of lambardar if he had, in fact, held that appointment? (ii) Is the fact that a man is a patwari a sufficient reason for dismissing him from his appointment as lambardar? Before proceeding further with this case, I call for a report from the Commissioner about (i).

ORDER

27th August 1926 —My order of 22nd June 1926 will be read as part of this order.

I am not satisfied that there is any such defect in Khalas Khan as would justify his dismissal, if he were a lambardar. I am, therefore, of opinion that Collector should have appointed him to be a *lambadar* in accordance with the rule of primogeniture.

Let notice issue to the second party to show cause why the Collector's order should not be reversed.

ORDER.

28th October, 1926—My order of the 27th August 1926, should be read as part of this order. The provisions of rule 17 (2) (c) are quite clear. The Collector may refuse to appoint a person on any ground which would necessitate or justify the dismissal of that person from the office of headman. In this case, the only ground on which the dismissal of Khalas Khan might be justifiable, would be the fact that he has to be absent from his village, because he is a patwari. I think, however, that it would be bad policy to let it be assumed that a man, who is serving as a patwari is liable to dismissal from his appointment as headman. It is obvious that, if Khalas Khan had been headman in fact, the fact that he had accepted office as a patwari would not have justified his

dismissal, unless he had shown himself to be unable to provide an efficient substitute. In the circumstances I am of opinion that Khalas Khan's claim should not be overlooked. I accept this appeal and I appoint Khalas Khan to be lambardar. Khalas Khan should be directed to apply for the appointment of a suitable substitute within one month of this date, failing which he will render himself liable to dismissal. The parties will bear their own costs.

Appeal accepted.

LAHORE HIGH COURT.

Appellate

No. 1421 of 1922. (Decided on 10-5-1926).

Civil.

Harrison and Dalip Singh, JJ.

ABDUL RAHMAN

Appellant

Versus

GHULAM MUHAMMAD and others

Respondents.

Punjab Land Revenue Act, S. 28—whether land can be alienated to patwari.

Under the rules framed by the Financial Commissioner under S. 28 of the Punjab Land Revenue Act, XVIII of 1887, a Patwari is debarred from acquiring land in the village to which he is appointed.

Second Appeal from the decree of Additional District Judge, Lahore.

Appellant :—by Messrs. Tirath Ram and Asghar Beg.

Respondents :—by Mr. Tara Singh.

JUDGMENT.

Dalip Singh, J.—The facts of this appeal are briefly as follows:—

The land in suit was originally owned by one Khushi Ram jointly with others. He is alleged to have sold his share for Rs. 600 to a Mohammad Hussain, the then patwari in the village, and his brother Hassan Muhammad. The mutation was refused by the revenue authorities. Subsequently, Mohammad Hussain sold his share to the present plaintiff-appellant and the revenue authorities sanctioned this mutation. Thereafter, the present plaintiff brought this suit for possession of the land, alleging that the defendants had taken forcible possession of a portion of the land sold to him.

The trial Court dismissed the suit holding that under the rules framed by the Financial Commissioner under S. 28 of the Punjab Land Revenue Act, XVIII of 1887, a patwari was debarred from acquiring land in the village to which he is appointed (*vide* Standing Order No. 15 paragraph (9).) It held that this rule had the force of law and the sale in favour of the patwari was, therefore, forbidden by law, and the sale itself was, therefore, void under S. 23 of the Indian Contract Act.

The trial Court further held that there was no consideration for the sale to the patwari and that it had been effected with the object of winning

the patwari's favour. It relied on two rulings: *Shiam Lal v. Chhaki Lal* (1) and *Sheo Narain v. Mata Prasad* (2).

The lower appellate Court dismissed the appeal holding that the rules had the force of law and that, even if they had not the force of law, the contract was opposed to public policy under S. 23 of the Indian Contract Act. The lower appellate Court also relied on the Allahabad rulings quoted above. No other point was decided.

In second appeal the appellant has contended that the two Allahabad rulings have been overruled by a Full Bench decision of the same High Court reported as *Bhagwan Devi v. Murari Lal* (3). He has also referred to *Kamala Devi v. Gurdiyul* (4), another Full Bench decision, *Dhirendra Kumar v. Chandra Kanta* (5), a Calcutta ruling, and to *Balkishen v. Devi Singh* (6), a ruling of the Nagpur Judicial Commissioner.

The respondent has relied on *Kerakoose v. Serle* (7) and on various other rulings which, however, need not be mentioned as the facts in those rulings were quite different.

It is unnecessary for us to decide whether the rules framed under S. 28 are *ultra vires* or *intra vires* of the Financial Commissioner, or whether they have the force of law or not, as we consider that the appeal can be disposed of on the ground that the contract is opposed to public policy. It is obvious that it would be most detrimental to the due performance of the duties of a patwari, if he were allowed to become a landlord in the circle in which he is serving. The patwari is concerned with maintaining a true and accurate record of rights of agricultural land in that circle and also in maintaining an accurate record of the fact of possession of agricultural land. It follows, therefore, that, if he himself is an owner of land in that circle, it is likely that his interest may conflict with his duties. With all respect to the Full Bench decision in *Bhagwan Devi v. Murari Lal* (3) we are unable to agree with the reasoning thereof. Mr. Justice Walsh in that ruling points out that there is a distinction between the subject matter of the contract and the conduct of the party entering into the contract and that it is only the former question which should be considered in applying S. 23 of the Indian Contract Act. In *Kerakoose v. Serle*, (7) the Privy Council held that it was contrary to public policy to appoint the Registrar of the High Court to present bills on behalf of infants for accounts of their estate on the sole ground that such an appointment was likely to conflict with the duties of the Registrar, because the Registrar derived a benefit from all monies paid into court. Counsel for the appellant, contends that this ruling can be distinguished, because the commission paid

(1) 22 All. 220. (2) 27 All. 78. (3) 39 All. 51 (F. B.) (4) 39 All. 58 (F. B.) (5) 68 I. C. 648. (6) 52 I. 153. (7) 3 Moo. I. A. 329, 346 (P. C.)

to the Registrar was a secret one, and he concedes that, unless this is so, the ruling is not distinguishable. The Commission, as a matter of fact, was paid according to the practice of the Supreme Court as pointed out in that ruling. There was, therefore, no question of secrecy about it. Now, as pointed out by the Privy Council in that case, the object of appointing the Registrar was a laudable one; but it was the fact that the Registrar was an official of the Court, which made the appointment a bad one. Therefore, the distinction drawn by Mr. Justice Walsh in Allahabad case seems not to have been approved of by the Privy Council. In *Dhirendra Kumar v. Chandra Kanta*(5), the question arose under the Government Servants Conduct Rules. In our opinion that is a totally different matter, because, a Government servant is not absolutely prohibited from acquiring land, nor does it necessarily follow that, if he does so acquire land, his duties will conflict with his interest. The case of a Patwari acquiring agricultural land in his own circle stands, it seems to us, on a wholly different footing. We hold that the only object of the agreement was the acquisition of land by the Patwari and, in the nature of things, this would tend to injure the public service.

We, therefore, dismiss this appeal, but, in view of the fact that the appellant had some justification in filing his second appeal and, as pointed out in the Calcutta ruling, the matter has been the subject of conflict of authority, we do not allow respondent his costs.

Appeal dismissed.

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IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate

Revenue.

No. 56 of 1925—26. (Decided on 2-11-1926.)

Barron and King, F. Cs.

INDAR SINGH

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Appellant

Versus

Mst. LACHHI DEVI

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Respondent.

Punjab Colonies Act of 1912, S. 20 (a)—death of original tenant—the term “Male lineal descendants”—if includes an adopted son—registered deed of adoption—Revenue officer, if bound to take notice of.

In the case of the death of an original tenant, the term “male lineal descendants” is defined as including an adopted son whose adoption has been ratified by a registered deed. Where a registered deed, ratifying an adoption, is put in evidence, a Revenue officer, dealing with mutation of names of an original tenant who has deceased, is bound to take cognizance of that evidence and he ought not to go further to make a meticulous inquiry to ascertain whether the adoption is or is not valid.

Appeal from the order of the Commissioner of Rawalpindi.

ORDER.

Barron, F. C. (2-11-26):—This is a case of the mutation of a horse-breeding grant, in the Lower Jhelum Canal Colony, held by one Sukha Singh, who has died, leaving a widow but no children. The Collector sanctioned mutation in favour of a lad, Indar Singh, the grandson of his eldest brother, Lal Chand, who is said to have been adopted by Sukha Singh. The Commissioner has declined to recognise the alleged adoption, and has ordered mutation in favour of Sukha Singh's widow Mst. Lachhmi Devi. Hence this second appeal.

The rules regarding succession to these horse-breeding grants on the death of a tenant are contained in the First Schedule referred to in clause 17 of the Deed of Grant on pages 134—136 of Colony Manual Vol. II, more particularly, rules 1 and 8 of the Schedule. The Commissioner has held that a Revenue Officer in mutation proceedings should not enter into proofs of adoption, when there is another person to whom the property may descend under these rules. He has, therefore, preferred the widow to the adopted son. Under rule 8, the grant only passes, to the widow, if the tenant leaves no legitimate male descendant in the direct male line, or no heir appointed under rule 7. In coming to this conclusion, the Commissioner has, it seems to me, overlooked S. 20 (a) of the Colonies Act of 1912, where in the case of the death of an *original* tenant, which Sukha Singh was, the term : "male lineal descendants" is defined as including an adopted son, whose adoption has been ratified by a registered deed. Now, in this particular case, there is a registered deed, the execution of which is not disputed, ratifying the adoption of Indar Singh by Sukha Singh. As a matter of fact, the widow, Mst. Lachhmi, on 19th March 1925, admitted the fact of Indar Singh's adoption before the Tahsildar, though, as is customary in such cases, she withdrew this admission a month later. But the fact remains that a registered deed ratifying the adoption was produced before the Revenue Officers, and, if a Revenue Officer is to take no notice of such a document in mutation proceedings, S. 20 (a) of the Act might as well never have been enacted. Rule 1 of the Schedule already referred to lays down that the word : 'son' means a legitimate son, or an adopted son, where adoption can validly be made. Whether Sukha Singh could adopt a son under the law applicable to the parties, or whether his adoption of Indar Singh was properly and validly carried out, are, in my opinion, questions which should be left to a Civil Court to decide. But the fact that he had actually made such an adoption having been proved to the Revenue Officers dealing with the mutation by the production of the registered deed, the Revenue Officer was, in view of the wording of S. 20 (a) of the Act, bound to take notice of. The *onus* of proving that this adoption was not a valid one, rests on the persons disputing its validity.

The order of the Collector sanctioning mutation in favour of the adopted son Indar Singh on condition of the regular payment of maintenance to the widow Mst. Lachhmi, as agreed to before the Tahsildar, was, therefore, in my opinion, correct. The appeal is accepted, and the Collector's order restored. The appellant is granted his costs throughout.

King, F. C. (3-11-26)—A registered deed ratifying an adoption is evidence that the adoption was made. A Revenue Officer dealing with the mutation of names of an original tenant who has deceased is bound to take cognizance of that evidence, but he ought not to go further and attempt to make a meticulous inquiry to ascertain whether the adoption was or was not valid. That is a question which can only be decided by the regular Courts. Therefore, in the case of Crown tenants who are original tenants I agree that the Revenue Officer is right to act on the evidence of a registered deed. For these reasons I concur with my colleague. I wish to say, however, that the question of the adoption of a son in other cases is a different matter entirely. There not only is the fact of adoption questionable, but the custom applicable has also to be proved. A Revenue Officer would, therefore, first have to decide whether an adopted son can succeed, and, next, whether the son has in fact been adopted. In the case of an original Crown tenant there is S. 20 of the Act which declares that an adopted son whose adoption is ratified by registered deed shall succeed; thus the only question in such cases is whether, in fact, there has been an adoption. The registered deed is sufficient evidence of this for the purposes of mutation.

Barron, F. C. (4-11-26)—The appeal is accordingly accepted as in my order of 2nd November 1926.

Appeal accepted.

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 68 of 1925-26. (Decided on 28-10-26.)

King, F. C.

ALLAH BAKHSH

Appellant

Versus

JAHAN KHAN

Respondent.

Sufedposhi and zaildari—selection for office—opinion of local officers —if entitled to weight—opinion of Commissioner—if valuable.

When there is a question as to the qualifications of two candidates for an appointment such as Sufedposh or Zaildar, the opinion of the local officer and the grounds he has given for selecting one particular candidate should receive

full attention and his decision should not be reversed without strong cause. In such a case the opinion of the Commissioner that a particular candidate is too young to perform efficiently the duties which fall to him as safedposhi or zaildari is entitled to at least the same weight as the opinion of the local officer.

Appal from the order of the Commissioner of Rawalpindi.

ORDER.

The facts are given in the orders of the Collector and the Commissioner. I issued a notice to the second party, because I wanted to see the two candidates side by side. I entirely agree with the Commissioner that Allah Bakhsh is too young to be appointed a safedposh and he has plenty of time to wait and show his ability.

This case is to be differentiated from the cases of *Attar Singh v. Ganga Singh* (1) decided by Fenton, Financial Commissioner and *Mashir Ali v. Chiragh Khan* (2) decided by Maynard F. C. It is perfectly right that when there is a question as to the qualifications of two candidates for an appointment such as safedposh or zaildar, the opinion of the local officer and the grounds he has given for selecting one particular candidate should receive full attention and his decision should not be reversed without strong cause. In the present case, however, the position is somewhat different. The opinions of the Commissioner and the Collector as to the general qualifications do not differ. There is, however, a difference of opinion as to whether one of the candidates is or is not sufficiently old to impress his personality upon lamdardars with whom he will have to deal. In such a case the opinion of the Commissioner that a particular candidate is too young to perform efficiently the duties which fall to him as safedposh or zaildar is entitled to at least the same weight as, if not greater weight than, the opinion of the local officer. In this case I see no reason to reverse the opinion of the Commissioner with which I am myself in agreement. Allah Bakhsh is obviously too young at present to act as safedposh and must give way, therefore, to Jahan Khan.

The appeal is dismissed. The parties will bear their own costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side

Revenue.

No. 161 of 1925-26. (Decided on 28-10-1926).

King, F. C.

MOHAMMAD-USMAN KHAN

Applicant

Versus

ATA MOHY-UD-DIN and others

Other side.

(1) 1 P.R. 1918 (Rev.)

(2) 1 P.R. 1918 Rev.)

Punjab Tenancy Act—S. 14, plaintiff entitled to possession of land—defendant in possession without owner's will—if liable to pay rent—jurisdiction of Revenue Court.

Where the defendant remains in possession of land against the will of the plaintiff who became entitled to the possession of such land, held, that the defendant is liable to pay for such possession under S. 14, and that the suit is triable by a Revenue Court.

Revision of the order of the Commissioner, Jullundur

ORDER. (11-8-26).

The only point for consideration by me is whether the suit is or is not triable by a Revenue Court. The facts are clearly given in the order of the trial Court and I need not repeat them. It seems clear to me that from the time when the plaintiffs in the proceedings before the District Judge paid into Court the sum of Rs. 1,154 they became entitled to possession of the land, and the defendant's possession subsequent to that date is possession without the consent of the owner, and the defendant is, therefore, liable to pay for such possession under the provisions of S. 14 of the Tenancy Act. The suit is, therefore, triable by a Revenue Court as far as the principal Usman is concerned.

As regards the defendant Sandhi the position is different. He is not in possession of the land. He is certainly not in any sense a tenant under the plaintiffs. It seems to me then that he cannot be made a defendant in a Revenue Court. I think, the suit against Sandhi should be dismissed, or the plaint should have been returned to have Sandhi's name struck out. As far as I can see at present Sandhi can only be sued in a Civil Court for recovery of any sum due from Usman as rent which Usman fails to pay. The two cannot be sued jointly in a Revenue Court. Notice must issue to both parties.

ORDER. (28-10-26.)

My order of the 11th August 1926, should be read as part of

The petition for revision is accepted and that portion of the trial Court's order, which decrees against Sandbi Khan, is cancelled. The parties will pay their own costs in this Court.

Revision accepted.

PUNJAB CASE-LAW, PART C. [1926]
IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side

Revenue.

No. 136 of 1925-26. (Decided on 3-11-1926).

Barron, F.C.

NIZAM DIN

*Applicant**Versus*

MEHTAB and others

Respondents.

Punjab Tenancy Act, 77 (3) (e)—Revenue officer—sitting as Revenue Court—power of awarding decree for possession based on mortgage—compromise effected—procedure.

Held, that the Assistant Collector acting as a Revenue Court could not give a decree for possession of the land based on a mortgage and that on the plaintiff's suit for rent being compromised, the Revenue Court should have recorded the terms of compromise and then dismissed the suit and directed each party to bear their own costs.

Punjab Land Revenue Act, S. 37—compromise effected—correction of record of rights.

Held, that on the plaintiff's suit for rent being compromised a copy of the terms of compromise should be sent by the Revenue Court to the Tahsildar with instructions that a mutation is to be entered up in accordance therewith.

Case referred by the Commissioner of Multan.

ORDER.

This is a case which has been referred to by the Commissioner of Multan for the orders of the Financial Commissioner under S. 84 of the Tenancy Act. I have heard Counsel on both sides, but the matter being a somewhat unusual one, they have not been able to render much assistance in quoting either law or precedents.

The facts are given in the references made by the Deputy Commissioner, Lyallpur, and the Commissioner, Multan, and need not be repeated. I agree with them that the Assistant Collector acting as a Revenue Court could not give a decree for possession of the land based on a mortgage. When the plaintiff's suit for rent was compromised, the Revenue Court should have recorded the terms of the compromise, and then dismissed the suit, and directed each party to bear their own costs. An order to this effect should now be passed in the suit for rent.

It seems to me, however, that in a case of this nature it is incumbent on the Revenue Officers dealing with the case to take some further action in order that the record of rights concerning the plot of land in question

may be corrected up-to-date. A copy of terms on which the suit has been compromised should, therefore, be sent by the Collector to the Tehsildar with instructions that a mutation is to be entered up in accordance therewith, and suitable orders passed as in ordinary mutation proceedings.

Revision accepted.

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LAHORE HIGH COURT.

Appellate

Civil.

No. 308 of 1922. (Decided on 2-3-1926).

Broadway and Forde, JJ.

JAI KARAN and others

Applicants

Versus

NATHU RAM and another

Respondents.

(i) Punjab Tenancy Act, S. 59 (2)—widow transferring her rights in the occupancy holding to two brothers—shares specified—tenants in common—survivorship.

A widow sold her rights in the occupancy holding to two brothers. Their respective shares were specified. One of the brothers died without leaving any heir behind.

Held, that as the shares were specified, the tenancy held by the brothers was a tenancy-in common and not a joint tenancy and that therefore the principal of survivorship did not apply to the case. 60 I.C. 513 and 60 I.C. 862 fol. 109 P.R. 1894; 6 P.R. 1902 Rev; 6 P.R. 1917 Rev. referred.

(ii) Punjab Tenancy Act, S. 77 (3) (d) and proviso—one of the alienees of rights of occupancy dying heirless—landlord's suit for possession—jurisdiction.

Two brothers purchased rights of a widow in an occupancy holding. Their shares were specified in the deed of conveyance. One of the brothers dying heirless, the landlord sued in a Civil Court for the possession of land held by the deceased on the ground that the brothers were tenants-in-common and the occupancy tenancy qua deceased share became extinguished. Question of jurisdiction was raised. Held, that as no question as to the existence of an occupancy required decision, the only question being as to the right of the other brother's heirs to succeed to the deceased's tenancy, the suit was cognizable by a Civil Court. 73 P.R. 1915; 111 P.R. 1916; 130 P.L.R. 1918; A.I.R. 1924 Lah. 636 and 56 I.C. 548 referred to.

Second Appeal from the decree of District Judge, Hoshiarpur.

Appellants :—by Mr. Mehr Chand Mahajan.

Respondents :—by Messrs. Badri Das and Jagan Nath Bhandari.

JUDGMENT.

Broadway, J.—This second appeal has arisen in the following circumstances :—The plaintiffs, Nathu Ram and Amar Nath sued the defendants, Jai Karn and others, for possession of certain land. It appears

that this land had been held by a woman Ms.^c Parchono as occupancy tenant under the plaintiffs. Mst. Parchono had sold her rights in the occupancy holding to two brothers, Biba and Nihal Chand. In the deed of conveyance Biba was shown as having bought 1/3rd and Nihal Chand 2/3rds of the entire holding. Biba died without leaving a widow or any issue. Nihal Chand's descendants claimed to take Biba's 1/3rd share by right of survivorship and were recorded in the revenue papers as occupancy tenants of the entire holding. The plaintiffs alleged that the tenancy was a tenancy-in-common and not a joint tenancy and that on the death of Biba without issue the occupancy tenancy *qua* his (Biba's) 1/3rd share became extinguished. The Courts below concurred in decreeing the plaintiffs' suit on the ground that the tenancy being a tenancy in-common the defendants could not succeed by right of survivorship to Biba's 1/3rd share. Against the decision this second appeal has been preferred through Messrs. Tek Chand and Mehr Chand Mahajan.

Before the trial Court an objection was raised to the effect that the Civil Courts had no jurisdiction to try the suit. This question was put in issue and decided against the defendants. The trial Court in this connection remarked, "Counsel for the defendants has also not pressed it (this issue) at all." In the appeal by the defendants to the learned District Judge the question of jurisdiction was again raised in the grounds but was not argued at the bar. In the memorandum of appeal filed in this Court the question of jurisdiction was not raised but at the hearing Mr. Mehr Chand Mahajan asked to be allowed to argue it as an additional ground. He was permitted to do so and referred to various authorities in support of this contention. The chief one of these is *Wadhawa* and others *v. Mussammatt Hassi* and others (1). In that decision the suit then under consideration was held to fall within the jurisdiction of the Revenue Courts. There, as is clear from the report, the question was as to the nature of the tenancy, that is to say, whether the tenancy was an occupancy one or not. In *Mihan Singh* and others *v. Mst. Bhagwan Kaur* (2) Shah Din, J. held that having regard to the proviso to sub-section (3) of S. 77 of the Punjab Tenancy Act (added by Punjab Act III of 1912) the question whether the defendants were occupancy tenants of the land concerned having arisen the suit should have been referred for decision to a Revenue Court. The same learned Judge in *Ghulam v. Jowala Singh* (3), a case the facts of which are very similar to the case now before us, held, that the Civil Courts had jurisdiction, the reason being that no question as to the existence of an occupancy tenancy had arisen in the suit which related only to the devolution of the occupancy tenancy. He referred to *Mihan Singh v. Mst. Bhagwan Kaur* (2) and distinguished it.

(1) 73 P.R. 1915.

(2) 111 P.R. 1916.

(3) 190 P.L.R. 1918.

Reference was not made, however, to *Wadhawa v. Mst. Hassi* (1). A similar question arose in *Parabh Dayal v. Mst. Radho* (4), where Mr. Justice Abdul Raof, while saying that he was inclined to agree with the view expressed in *Ghulam v. Jawala Singh* (3), felt himself bound by the Division Bench decision in *Wadhawa v. Mst. Hassi* (1).

Mr. Badri Das on behalf of the respondents emphasized that in the present case there was no question involved as to the existence of the occupancy tenancy, the question being only as to whether the defendants-appellants had succeeded by right of survivorship to Biba's 1-3rd share of the holding. He further contended that the question of jurisdiction had to be decided entirely on the allegations in the plaint. In support of his contention he cited *inter alia*, *Karam Dad v. Hussain Bakhsh* (5). No doubt, this proposition is to a large extent correct but having regard to the proviso to S. 77 (3) referred to above, it is perfectly clear to my mind that when in a suit instituted in a Civil Court a plea is raised which necessitates a decision as to whether an occupancy tenancy exists, that question has to be decided by a Revenue Court.

After a consideration of all the authorities I am of opinion that the facts of this case are quite different from those in *Wadhawa v. Mst. Hassi* (1), and that no question as to the existence of an occupancy tenancy requires decision. All that has to be decided in this case is whether on the death of Biba without issue the defendants-appellants are entitled to succeed to his 1/3rd share. Turning to this question it has been found by the Courts below that there was no joint tenancy as between Biba and Nihal Chand, the position between the two brothers being that of a tenancy-in-common. This is a question of fact and Mr. Mehr Chand has not attempted to challenge it. He has urged, however, that the real way to regard the case is to hold that Biba and his brother formed one "tenant" and *qua* the landlord the occupancy tenancy continued in regard to the entire holding. He further contended that an occupancy tenancy was not a true joint tenancy and that even assuming that it was a tenancy-in-common the right of survivorship entitles the defendants-appellants to succeed. In this connection he referred to *Mohru v. Mutsaddi* (6); *Agar Singh v. Dhana* (7) and *Chanda Singh v. Jiwan Singh* (8). It is true that some of the remarks made by the Financial Commissioners support Mr. Mehr Chand's contention, but after a careful examination of the judgments in those cases it seems to me that all that was decided in each case was that there had been no partition of the joint tenancy. On the other hand, Mr. Justice

(4) A.I.R. 1924 Lah. 636.

(5) 56 I.C. 458.

(6) 109 P.R. 1894.

(7) 6 P.R. 1902. (Rev).

(8) 6 P.R. 1917. (Rev.)

Chevis in *Hako v. Sultan Muhammad Khan* (9) and *Mst. Utmi v. Nihal Chand* (10) after a consideration of the authorities already referred to, came to the conclusion that there was a distinction between a joint tenancy and a tenancy-in-common, the test being whether definite shares had been specified, and that it was only in the case of a joint tenancy that the principle of survivorship applied. This view appears to me to be correct. There can, in my opinion, be no doubt that when Mst. Barchono sold her occupancy holding to Biba and Nihal Chand, Biba purchasing $1/3$ rd and Nihal Chand $2/3$ rd of the entire estate, the tenancy became a tenancy-in-common and that the principle of survivorship did not apply. The view taken by the Courts below is therefore, correct, and I would dismiss this appeal with costs.

Fforde, J.—I agree.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB

Revision Side

Revenue.

No. 167 of 1925-26. (Decided on 28,10-1926).

King, F.C.

SHER SINGH

Applicant

Versus

FAQIRIA ..

Other side.

(i) Punjab Tenancy Act, S. 4 Cl. (12)—'Haq Ihtrafi'—village cess—
nature of.

Held, that Cl. (12) of S. 4 the Punjab Tenancy Act clearly shows that 'Haq Ihtrafi' is a village cess. It is certainly a contribution or dues which is customarily leviable within the estate and is neither a payment for the use of private property nor for personal service, nor imposed by or under any enactment for the time being in force.

(ii) Punjab Tenancy Act, S. 77 (f)—jurisdiction—suit for recovery
of 'Haq Ihtrafi.'

Held, that a suit for the recovery of 'Haq Ihtrafi' is triable by a Revenue Court.

(iii) Punjab Tenancy Act, S. 100 (b)—reference to High Court.

Where a Revenue Court finds that a Court subordinate to it has determined a suit which should have been heard by a Civil Court, the Revenue Court should submit the record of the suit to the High Court.

(iv) Punjab Tenancy Act, S. 84—revision—judgment not clear—
remand may be ordered.

In a suit for recovery of Haq Ihtrafi, the lower court's judgment not being clear as to whether the plea of abandonment of such rights was properly discussed, the Financial Commissioner on revision remanded the case for trial de novo.

(9) 60 I.C. 513.

(10) 60 I.C. 862.

Revision against the order of the Commissioner, Lahore Division.

ORDER.

The facts are given in the order of the Collector. The only point for decision as far as this Court is concerned is whether the Collector is right in his interpretation that these '*haquq ihtrafi*' are not village cesses. The Commissioner has thrown some doubt on this interpretation and I agree entirely with the Commissioner. A reference to clause 12 of S. 4 of the Punjab Tenancy Act, 1887, clearly shows that this *haq ihtrafi* (provision for which is made in the village administration paper) (*Wajib-ul-arz*) is a village cess. It is certainly contribution or due, which is customarily leviable within the estate and is neither a payment for the use of private property or for personal service nor imposed by or under any enactment for the time being in force.

It is clear, therefore, that the case is rightly triable by a Revenue Court. Even if it had not been triable by a Revenue Court, the Collector's method of dealing with it was wrong.

He should not have dismissed the appeal as he did, but that he should have made a reference to the High Court under S. 100 of the Punjab Tenancy Act, 1887. I am by no means certain that the point whether these '*haquq ihtrafi*' have or have not been abandoned has been sufficiently discussed in the judgments of the lower Courts. I, therefore, accept this petition for revision and I remand the case to the Collector who will hear the appeal *de novo* and will pass an order on its merits.

The stamp on this petition for revision and also the stamp on the petition to the Commissioner will be refunded. The other costs will follow the result.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1927.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB

Revision Side

Revenue

No. 45 of 1926-27. (Decided on 18-1-1927).

King and Barron. F. Cs.

JAWALA SAHAI.

Applicant

Versus

GURAN DITTA.

Other Side.

(i) **Punjab Tenancy Act, S. 110—Scope of—no relationship of landlord and tenant—section inapplicable.**

Held, that S. 110 is inapplicable to an agreement between parties who do not stand to each other in the position of a landlord and tenant.

(ii) **Punjab Tenancy Act,—object of.**

The whole object of the Tenancy Act is to protect the tenants from the exactions of landlord.

Revision from the order of the Commissioner of Lahore Division.

ORDER.

KING, F. C.—The plaintiffs in this case owned 377 kanals and 6 marlas of land in Mauza Walla and 60 kanals and 8 marlas in village Sultanwind, close to Amritsar. On the 10th December 1912, they leased this land to the defendants for a period of 10 years, it being stated in the lease that the term was to be from Kharif in Sambat 1970 to Baisakh in Sambat 1980. Baisakh 1980 corresponds to the 13th of April 1923. The defendants refused to vacate the land on that date, claiming that they should be given compensation for planting a garden and for reclaiming land to the extent of Rs. 40 thousand.

The plaintiffs accordingly brought two separate suits for ejectment, it being alleged that the defendants were cultivating separately and not jointly. One of the issues framed was "that in case defendants are proved liable to ejectment, to what compensation are defendants entitled?" *Onus probandi* on the defendants. As to this issue, the trial court made the following remarks:—

"The sole question in this issue worth mention is that, according to the terms of the registered leases, the defendants were to get annas three for every plant sown by them during their tenancy which they hand over to the plaintiffs. This condition, according to the terms of section 110, Tenancy Act, because it limits the claim of the tenants for compensation, is void and has no legal force,

Accordingly, the lower court decided that the compensation should be on general grounds and quite apart from the condition laid down in the agreement. In the result, the trial court granted a decree for the ejectment of the defendants, subject to the payment of Rs. 14,684 as compensation for planting plantains and other fruit and garden trees.

The plaintiffs appealed to the Collector and the Collector made the following remarks:—

" Clause 8 of the lease lays down that the lessors shall be entitled to claim compensation of not more than 3 annas for trees planted by them, except banana trees. Now this clause being a limitation of the right of the tenants to claim compensation for improvements is invalid under section 110, Tenancy Act, provided that the improvements were made according to the Act, *i. e.*, in this case with the assent of the landlord. If we look at clause 1 of the lease, we find that the land was given on lease for the purpose of planting fruit gardens. Any improvements done to the land in pursuance of the object of the lease, the plantation of gardens, are, therefore, to be considered, as havnig been done with the landlord's consent. The actual planting of fruit trees is, therefore, obviously an improvement under the Act *and nothing in the lease can limit the right of the tenants to claim compensation for such improvements.*"

I have underlined the important words in this quotation. Again, on general grounds, the Collector reduced the compensation to Rs. 3,803-12-0.

The defendant then appealed to the Commissioner who has made no mention of the law as regards the payment of compensation and who apparently has accepted the position in this respect taken up by the Assistant Collector and the Collector. The Commissioner, however, has increased the compensation due to Rs. 6,114-8-0. The defendant again petitioned the Commissioner for review, but his petition was rejected; and

the plaintiff has now presented a petition to this court asking for revision.

I have admitted the petition and I have heard both parties, because, it seems to me that the interpretation of the law as given by the Assistant Collector and the Collector is so mistaken as to amount to a serious irregularity in the proceedings, justifying interference by this court under section 84 of the Tenancy Act. All the lower courts have based their argument on the assumption that the agreement, which forms the lease and which contains the provisions as to compensation, is an agreement between landlord and tenant. Section 110 of the Tenancy Act clearly says that nothing in any agreement made between a landlord and a tenant shall take away or limit the right of a tenant as determined by this Act (*i.e.*, the Tenancy Act) to make improvements and claim compensation therefor, or, where compensation for disturbance can be claimed under this Act, to claim such compensation. Section 111 of the same Act says that, save as expressly provided in this Act, nothing in this Act shall affect the operation of any agreement between a landlord and a tenant, provided that the agreement either is in writing or has been recorded in a record-of-rights before the passing of the Punjab Land Revenue Act, 1887. If the agreement of the 10th December 1912 is an agreement between a landlord and a tenant, then it is quite clear that section 111 will not have the effect of avoiding the provisions of section 110. Section 110 expressly provides that nothing in an agreement shall take away or limit the right of a tenant to claim compensation and section 111 says that only those agreements between a landlord and a tenant can be maintained, which are not contrary to anything expressly provided in the Act. If, therefore, the agreement of the 10th December 1912 is an agreement between a landlord and a tenant, then the view of the law taken by all the lower courts is correct. I am, however, of opinion that the agreement of the 10th December 1912 was not an agreement between a landlord and a tenant. At the time that agreement was signed, no such relationship existed between plaintiffs and defendants. The two parties were on an equal footing and they were dealing with each other without any special relation between them.

The whole object of the Tenancy Act is to protect tenants from the exactions of landlords. Tenants are in many cases peculiarly liable to oppression or duress from their landlords, and, in order to protect them quite effectively from the possibility of any such oppression or duress, the Tenancy Act has been passed and one of the provisions of that Act, still further to ensure the complete liberty of the tenant, provides that a tenant shall not be able to contract out of the provisions of the Act. The reason for all this is quite plain. It is quite another matter, when two persons, between whom there is no such relation as that of landlord and tenant, come together to decide on the terms of a contract of lease, which shall be

operative between them. Here there is no such obvious necessity for the protection of the tenant to be, as there is necessity to protect the tenant who actually is. The agreement is not and cannot properly be described as an agreement between a landlord and a tenant. It is an agreement between two persons of precisely equal status, and as such, it cannot come within the purview either of section 110 or of any other sections of the Tenancy Act, which limit the rights of a landlord with respect to a tenant.

It seems to me then that the lower courts should have upheld the clause of the agreement of lease, which prescribes that the rate of compensation is not to exceed three annas per tree. I, therefore, accept this petition and, setting aside the order of all the lower courts, I direct that the Assistant Collector shall pass a fresh order after admitting as valid that portion of the agreement which prescribes that compensation shall not exceed three annas for each tree. The costs of all the proceedings will follow the final result.

Barron, F. C.—My colleague and I discussed this case before the above order in revision was written. I entirely concur in the finding that, as the relationship of landlord and tenant did not exist between the parties at the time the lease of 10th December 1912 was executed, section 110 of the Tenancy Act is not applicable to the agreement then entered into. The section cannot, therefore, prevent effect being given to the terms of the lease.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 8 of 1926-27. (Decided on 17-1-1927.)

King, F. C.

SUDH SINGH

Appellant

Versus

CROWN

Respondent.

Zaildar—suspension for bad record—dismissal, proper remedy.

In an appeal against the suspension of a Zaildar for not keeping the Zaildari book properly, held, that the proper remedy is dismissal outright.

Appeal from the order of the Commissioner of Jullundur Division.

ORDER.

I have heard what Mr. Sawheny has had to say on behalf of his client and I have inspected the Zaildari book which every Zaildar is supposed to have written up regularly. I find that in the Zaildari book no entries have been made since 1911. It seems clear that the Zaildar, being old and incompetent and thoroughly lazy, has either not

troubled to produce his Zaildari book when officers have come through his Zail, or else has deliberately kept back the book so as to avoid unfavourable entries. He produces a second book, which is really the zaildari diary and which contains one or two favourable entries. This is an old trick of keeping one book of favourable entries and not producing the book when it is known that an entry likely to be unfavourable will be made.

The Commissioner says that the Zaildar has a bad record and, from what I have seen of him, I entirely agree with this view. I cannot think, however, that any good will be done by suspending a man who has such a record. The proper remedy is dismissal. I, therefore, vary the Commissioner's order and direct that the present Zaildar, Sudh Singh, shall be dismissed from his appointment.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 21 of 1926-27. (Decided on 29-1-1927).

King, F. C.

LT. SARDAR SIKANDAR HAYAT KHAN AND ANOTHER.

Appellants

Versus

CROWN

Respondent.

Punjab Land Revenue Act, S. 57—Revenue assessment over large area—acceptance by many villages without appeal—appeal by one village—special grounds to be proved.

When an assessment is made, involving a large area such as a tahsil or an assessment circle, and when over the greater part of that area the assessments have been accepted without appeal, it is quite legitimate for the Settlement Officer to call attention to this fact, when dealing with particular villages. It is quite legitimate for him to say that he has not increased the assessment more on one particular village than he has on half or dozen a more other similarly situated villages; and the fact, that only one village has appealed, may be taken into consideration in deciding whether the assessment, as a whole, is a fair one or not. The fact, that other adjacent villages have not appealed, although their circumstances appear to be somewhat similar indicates that, taking the whole area, the assessment is not excessive. If any particular village appeals, it must do so on the grounds special to itself.

Second Appeal from the order of the Commissioner of Rawalpindi Division.

ORDER.

These five appeals are second appeals from the order of the Commissioner, conforming the Settlement Officer's orders on the assessment on five villages, namely, Wah, Bhabra, Dallo, Gatia and Khandaripur. The grounds of the appeal are the same in all the five cases. There has been a change in the name only of the estate dealt with in each appeal. The

Commissioner decided the appeals in one order and I propose to deal with them in one order also.

One general ground has been urged by the learned counsel who has argued the case for the appellants and that is that there is great difficulty in obtaining tenants, because of the proximity of the Wah Cement Works and also because the profession of carting along the Grand Trunk Road is found to be more profitable than agriculture. As to this it is only necessary to say that the Cement Works must cause the presence of a large number of persons who have to live on the produce of the country. Wherever such large works are established, it has been found that land owners, far from finding the presence of these works detrimental to their interests, find them exceedingly profitable. The workers on these works form a ready and accessible market where the produce of neighbouring fields can easily be sold. It may be true that, when such works are at first established, they tend to draw away agricultural labour from adjoining villages. That process is, however, soon accomplished; and matters adjust themselves so that there is, as a rule, enough labour not only for the villagers but also for the works. One fact, which seems to me to controvert the suggestion that there is serious difficulty in getting tenants, is the fact that there does not appear to be a serious decrease in cultivation. On the whole, cultivation has increased rather than decreased. If land were lying vacant, because tenants were not procurable, it seems obvious that cultivation would have decreased. I am, therefore, not greatly impressed by the argument that the presence of the large Cement Works at Wah has proved detrimental to agriculture. Then again it is urged by counsel that the Commissioner and the Settlement Officer gave undue weight to the fact that other appeals had not been lodged by neighbouring estates. Counsel argued that every case should be dealt with on its merits, and the fact, that in a neighbouring village no appeal had been lodged; was not a good ground for assuming that in the particular cases under consideration appeals had been lodged unnecessarily. This argument would be fair, if the Commissioner and the Settlement Officer had given great weight to the fact that other villages had not filed appeals against their assessments. In truth, however, the Settlement Officer and the Commissioner have merely mentioned this fact without in any way emphasising it. I think that, when an assessment is made involving a large area such as a tahsil or an assessment circle and when over the greater part of that area the assessments have been accepted without appeal, it is quite legitimate for the Settlement Officer to call attention to this fact, when dealing with particular villages. It is quite legitimate for him to say that he has not increased the assessment more on one particular village than he has on half a dozen or more other similarly situated villages; and the fact, that only

one village has appealed, may be taken into consideration in deciding whether the assessment, as a whole, is a fair one or not. All that need, be said about this argument is that the fact, that other adjacent villages have not appealed, although their circumstances appear to be somewhat similar, indicates that, taking the whole area, the assessment is not excessive. If any particular village appeals it must do so on the grounds special to itself. It is necessary then to see whether, in the case of the villages with which we are now concerned, there are any such special grounds which indicate an excessive assessment.

The Commissioner has gone through each ground of appeal with great care. The Settlement Officer has also examined each ground of appeal separately and I have scrutinized their decisions. It seems clear to me that both the Settlement Officer and the Commissioner have made out a very good case for the proposed assessment of each of these five villages. It is true that the increases brought out vary up to 64 per cent., but it is an admitted fact that the previous Settlement Officer had dealt leniently with these villages, the reason for his doing so being apparently the fact that even in his time the increase to be taken was great. He was probably also influenced by the fact that there was difficulty in adjusting the rents of occupancy tenants and *mukarraridars*, so as to ensure that they should pay their portion of the enhanced assessment. However that may be, the fact, that the owners of these estates have for the last 20 or 30 years paid at very lenient rates, does not appear to me to be a good argument against assessing them fairly now. They have already received all the concession which was required.

Another point is that there has been no increase in fertility or in productiveness. In so far as wells have been sunk and *chahi* cultivation have been substituted for *barani* cultivation, this argument is incorrect. *Barani* cultivation which was *barani* at the time of last settlement, remains much the same as before. It is clear, however, that an increase is justifiable on the ground of the increase in prices which has taken place.

On the whole, having regard to all the facts, I am of opinion after careful consideration that these estates have been fairly assessed and that there is no reason to reduce the assessment. In one respect, the owners have been very lucky. But for mistakes which were made at last settlement in the recording of the rights to the stone quarries, which exist in some of these estates, they might have been made to pay an assessment on account of those quarries. As it is, the fact, that they derive large profits by the existence of these quarries in the area owned by them, has not been taken into consideration in fixing the assessment.

All these appeals are dismissed.

Appeals dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 10 of 1926-27. (Decided on 14-1-1927).

King F. C.

SAIDE KHAN

*Appellant**Versus*

MOHAMMAD AFZAL KHAN

*Respondent.***Inamkhor—appointment by Deputy Commissioner—interference by the Commissioner—competency.**

Held, that a Commissioner is competent in certain cases to interfere with the appointment by a Deputy Commissioner of a certain person as Inamkhor.

Appeal from the order of the Commissioner of Rawalpindi Division.

ORDER.

I issued notice to the respondent owing to the 3rd ground of appeal, where it is said that respondent (*i. e.*, Mohammad Afzal Khan) withdrew. From the Revenue Assistant's report, dated 5th April 1925, it is clear that whatever his statement before Tahsildar may have been, he had never intended to withdraw.

I agree with Commissioner that this is one of those rare cases, in which the Commissioner was justified in upsetting the order of Collector. Mohammad Afzal Khan is at the present time obviously the better man to be *inamkhor*.

It is not necessary to consider the other grounds of appeal in detail. The Commissioner has carefully weighed the claims of both parties and I agree with him that Mohammad Afzal's are superior.

The appeal is dismissed with costs. Pleader's costs Rs. 16.

*Appeal dismissed.*IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue

No. 16 of 1926-27. (Decided on 17-1-1927).

King, F. C.

LAL CHAND AND ANTHER.

*Appellants**Versus*

CROWN.

*Respondent.***(i) Punjab Land Revenue Act, S. 48—assessment—land ceasing to be agricultural—liability for assessment.**Held, that the land, which has ceased to be agricultural, is not *ipso facto* excluded from the payment of Land Revenue.**(ii) Practice-jugment in back cases.**

Held, that in cases of distribution of batch, the Collector should give a self-contained order, which would not require reference to any other order or proceedings.

Appeal from the order of the Commissioner of Rawalpindi. Division
ORDER.

It is a pity that the Collector's order refusing to alter his order of distribution was so brief and omitted to give any reason. In all such cases it is advisable that the Collector should give a self-contained order, which would not require reference to any other order or proceedings. As it is, I have had to go into the Collector's order of distribution and I have no doubt that the Commissioner's time has been wasted in the same way.

The appellant is under a misapprehension, I think, in supposing that land which has ceased to be agricultural land *ipso facto* should be excluded from the payment of land revenue. Land which has been built over frequently becomes far more valuable than land which remains agricultural and it would be obviously unfair to most of the owners of an estate if in distributing an assessment nothing was placed on land which by the free will of its owner has been converted from agricultural to other more profitable uses. I am clearly of opinion that the Settlement Collector was right in assessing the mandi land attached to the Malakwala well at full rates. The actual rate of assessment is Rs. 22/8/ against a first class *chahi* rate of Rs. 20. For distribution purposes this slight increase is warranted.

I therefore dismiss this appeal.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER, PUNJAB

Appellate.

Revenue.

No. 47 of 1926-27. Decided on 11-5-1927.)

Townsend, F. C.

MOHAMMAD DIN

Appellant

Versus

SHAH MOHAMMAD

Respondent.

Lambardar—appointment of—hereditary claim—minor offence of father no bar—Punjab Land Revenue Act, S. 28—Land Revenue Rule 15.

Where a person belongs to the senior branch of the family, his father's conviction for a not very serious offence is no bar to his appointment as Lambardar.

Appeal from the order of the Commissioner, Rawalpindi. Division

ORDER.

I have heard parties by counsel. I consider Commissioner was quite right. Respondent belongs to the senior branch and I do not consider that his father's conviction of 1914 for a not very serious offence can be held to debar him from appointment now as Lambardar.

The Collector's position is not quite logical. He held that respondent, though unfit to be lambardar, was fit to be *Sarbarah* Lambardar. I reject appeal.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue

No. 7 of 1926-27 (Decided on 17-1-1927)

King, F. C.

RODU

Applicant

Versus.

MST. TALWAN KAUR AND ANOTHER

Other Side.

Punjab Land Revenue Act, S. 16—revision—judgment of the Assistant Collector clear—Collector considering all the salient point—no case for revision before the Commissioner.

Where the Assistant Collector who dealt with the suit originally has writ ten a full and clear judgment and the Collector has had the salient points of that judgment before him and has considered them, held, that the case is not one for the Financial Commissioner to interfere in revision. 4 P. W. R. 1916 (Rev.) distinguished.

Case forwarded by the Commissioner of Jullundur for the order of the Financial Commissioner.

ORDER

The Commissioner of Jullundur has referred to me 4 cases with a recommendation that I should exercise my powers of revision under section 84 of the Tenancy Act. A preliminary objection was taken that the grounds of revision were not properly stamped. I am not certain if this preliminary objection was valid. However that may be and without deciding whether the full stamp payable on an appeal should have been affixed on these grounds of revision, I am clearly of opinion that the petition is not one in which I should exercise my powers of revision under section 84. The reason suggested for the exercise of these powers is that the Collector has in his judgment only discussed the question of limitation and has not considered in the least the specific grounds of appeal Nos. 1, 2, 3 and 4 in the petition with which he had to deal.

I have inspected the Collector's record and I find that although he has not made mention of these grounds of appeal in his final order, yet he had a full note on each of the grounds of appeal before him before he issued notice and after considering those grounds he decided that it was necessary to issue notice only with respect to the ground dealing with the question of limitation. His vernacular order dated the 8th February 1926, clearly states that that notice is to issue only with respect to the question of limitation and although the order does not clearly reject the other grounds of appeal it is obvious that the Collector having heard the appellant or his pleader

did reject those grounds and wished to have a reply only on the question of limitation.

The pleader for the petitioner has referred me to the case of *Hanwanta v. Ram Sukh and Munt Phul* (1). I cannot hold that that ruling is relevant in the present case. It was a ruling dealing with a special set of circumstances which do not exist in the matter now under reference. In this case the Assistant Collector who dealt with the suit originally has written a full and clear judgment and the Collector has had the salient points of that judgment before him and has obviously considered them. It cannot be said therefore that there has not been any satisfactory investigation of the plaintiffs' plea or finding thereon.

I am therefore of opinion that the case is not one in which I should exercise my powers of revision. I return the records to the Commissioner and reject the petition for revision.

Petition rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

No. 74 of 1926-27 (Decided on 20-10-1927)

Revenue.

King, F. C.

RISALDAR PARDUMAN SINGH

Appellant

Versus

MIT SINGH

Respondent.

Zaildar—appointment by Deputy Commissioner—Commissioner not to interfere ordinarily.

The Commissioner should not ordinarily upset appointments to the post of Zaildar made by the Deputy Commissioner, unless very good reason for interference has been established. Where the Commissioner selected a person, who had considerable property, in preference to another, who owned very little and who was managing a restaurant and who had been selected by the Deputy Commissioner, held, that the Commissioner was justified in interfering and upsetting the appointment of the Deputy Commissioner.

Appeal from the order of the Commissioner of Jullundar Division.

ORDER.

It has frequently been held by this Court that the Commissioner should not ordinarily upset appointment to the posts of Zaildar made by the Deputy Commissioner, unless very good reason for interference has been established. In this case, the Commissioner has selected for the appointment the respondent, Mit Singh as against *Risaldar Parduman Singh*, (the petitioner who was appointed by the Collector), and the question for decision is whether the reasons for the selection of Mit Singh are sufficiently strongest to justify the Commissioner's interference. The strongest point appears to be the fact that *Risaldar Parduman Singh* owns very little land in the Zail and Mit Singh has a

considerable property. For the rest the claims of the two men are about equal. It is true that *Risaldar* Parduman Singh has years of personal military service to his credit. He was not a regular soldier, but was given a commission in the Supply and Transport Department. Mit Singh also belongs to a loyal family and has proved himself to be loyal on several occasions. The fact that Parduman Singh is managing a restaurant at Ludhiana must detract from his influence in his own Zail. Restaurant-keepers are not likely to make good Zaildar. I have seen both men and I prefer the appearance of Mit Singh to that of Parduman Singh. I am of opinion, on the whole, that the Commissioner was justified in interfering. I, therefore, dismiss the appeal. Parties will pay their own costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER,
PUNJAB.

Revision Side.

Revenue.

No. 145 of 1926-27. (Decided on 20-10-1927.)

C. M. King, F. C.

RANMAST KHAN and others

Applicants

Versus.

AMIR MOHAMMAD KHAN and others

Other Side.

Punjab Land Revenue Act, Ss. 112 (2) and 117 (1)—partition proceedings—barred by an entry in the village administration paper—question of title.

Held, that an entry in the village administration papers, stating that the common land of the village is not to be partitioned but to be kept for grazing does not raise any question of title, but only a question whether a certain land be partitioned or not.

Held further, that where in partition proceedings, there is partly a question of title involved, the proper procedure for the Revenue Officer is to proceed himself as a Civil Court under section 117 (1) and decide the question himself.

Case forwarded by the Commissioner Rawalpindi Division.

ORDER

This reference is made by the Commissioner of Rawalpindi under the provisions of S. 16, sub-section (3) of Punjab Land Revenue Act, XVII of 1887. The original petitioner asked for the partition of some 468,000 kanals of land situate in the area of land in the tahsil of Talagang. The Revenue Officer has stayed the partition proceedings, and has referred the parties to a Civil Court on the ground that a question of title has been raised, and that it is undesirable to proceed with the partition proceedings until the question of title has been decided by such Court. It is not, however, clear from the record what the question of title is. The Col-

lector in his order appears to hold that the question of title is the question whether an entry in the village administration papers, stating that the common land of the village is not to be partitioned but is to be kept for grazing, is a question of title. There is further a question of title raised by many persons who have occupied detached bits of land, which they are cultivating without paying any rent and of which they claim to be the owners. I am very doubtful whether the point made by the Collector can really be considered a question of title. I think that the wording of S. 117 of the Land Revenue Act clearly intends that the question of title to be determined is not the question whether the land shall or shall not be partitioned but the question of proprietary and other rights of occupation. The question whether a partition should or should not be allowed is one for a Revenue Officer to decide, and it is clearly placed within the powers of the Revenue Officer by S. 112, sub-section (2) of the Land Revenue Act. I am of opinion that this question cannot and should not be treated as a question of title so far as the partition of this large area of land is concerned. There are, however, smaller areas of land which, as has already been said, have been occupied by various persons and which are treated by those persons as being their own property. Here there are true questions of title and it is these bits of land which have really led to the whole discussion whether partition should or should not take place. The Assistant Collector in his order has stayed proceedings pending a reference to the Civil Court. I am, however, of opinion that it would have been better for the Assistant Collector to have used the second alternative permitted to him by S. 117, sub-section (1), that is to say, instead of referring the matter for decision by a competent Court, he should himself have proceeded to decide this question of title as though he were such a Court. The parties present on behalf of the respondents accept the suggestion that the order of the Assistant Collector should be modified to this extent. I, therefore, direct that instead of the parties being referred to a competent Court for a decision of the question of title, the Assistant Collector shall himself proceed to determine the question of title in accordance with second of the provisions of the S.117 (1) of the Land Revenue Act and, after he has come to a decision on that point, he will be at liberty to proceed with the petition of the joint holding or not, to proceed with it as he thinks fit. But in deciding this question he will be guided not by S. 117 of the Land Revenue Act but by the provisions of S. 112. The parties will bear their own costs.

Order accordingly.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 73 of 1926-27. (Decided on 21-10-1927).

King, F. C.

CH. BHAGWAN SINGH

Appellant

Versus

JAM GHULAM RASUL

Respondant.

Sufedposh—appointment of a non-resident—not desirable—substitute Zaildars to be avoided.

It is most unsuitable to appoint as Sufedposh a gentleman who is not even a resident of the district and who does not represent the majority of the land owners of the Zail. It is obvious that such a man would have to have a substitute and it is always undesirable to have substitute Zaildars or Inamdars, if that can be possibly avoided.

ORDER.

Appeal from the order of the Commissioner of Multan Division.

I entirely agree with the Commissioner, that, it is most unsuitable to appoint as Sufedposh a gentleman who is not even a resident of the district and who does not represent the majority of the land owners of the Zail. It is obvious that such a man, whose business is all at Shujabad, would have to have a substitute, and it is always undesirable to have substitute Zaildars or Inamdars, if they can possibly be avoided. I dismiss the appeal with costs, which I fix at Rs. 32 for respondent's pleader.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 96 of 1926-27. (Decided on 29-10-1927.)

King, F. C.

WALI MOHAMMAD and others

Applicants.

Versus

RAHMAT ALI and others

Other Side.

Civil Procedure Code, (V of 1908), S. 10—"matter in issue"—meaning of.

The phrase "matter in issue" has reference to the entire subject in controversy between the parties. It is not to be interpreted to mean "any of the questions" in issue. 38 L. C. 641 referred to.

Revision from the order of the Commissioner of Lahore Division.

ORDER.

I have heard Mr. Carden Noad at some length on this case. The first point for decision is whether there is any question of jurisdiction

involved which will justify my interference as a Court of revision. It seems to me that the argument that S. 10 of the Civil Procedure Code, in certain cases, has an exclusive effect on the jurisdiction of a Court is correct. The matter was discussed in the case of *Bepin Behary Mozumdar and others v. Jogendra Chandra Ghosh and another* (1). S. 10 of the Civil Procedure Code, it was there laid down, when applicable, leaves no discretion to the Court. If this ruling is correct and I respectfully concur with it entirely, then it seems to me clear that, if S. 10 of the Civil Procedure Code is in any case applicable and if a Court has failed to apply S. 10 properly, then a question of jurisdiction arises which can and should be considered by the Financial Commissioner as a Court of revision. I, therefore, decided to hear Mr. Noad on the merits, to decide whether as a fact S. 10 is or is not applicable. Here the point for decision is also laid down in the judgment which I have already cited. It has been there very clearly held that the phrase "matter in issue" has reference to the entire subject in controversy between the parties. It is not to be interpreted to mean "any of the questions" in issue. Now if we take this interpretation and apply it to the facts of the present case, we see at once that it is impossible to say that the matter in issue is the same in the present case as it is in the case which is pending before the Privy Council. In the latter, the matter in issue is the ownership of the property in dispute; while in the former, the matter in issue is the rent payable for the property which is in dispute. The two subjects are dissimilar; and the fact that one issue may be common to both cases, does not make the matter in issue identical. For these reasons, I am clearly of opinion that S. 10 of the Civil Procedure Code does not apply and I hold that the Collector was right to reverse the finding of the Assistant Collector and the Commissioner (whose order is unfortunately somewhat brief necessitating an extended order on my part) was equally right in confirming the order of the Collector. I dismiss this application for revision.

Revision dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 8 of 1927-28. (Decided on 29-10-1927.)

G. A. Barron, F. C.

SHIV DEV SINGH

Applicant

Versus

KARTAR SINGH and others

Other Side

**Punjab Land Revenue Act, S. 37—mutation—in accordance with
possession and the will of deceased owner.**

(1) 36 I. C. 641

Held, that the order of the Commissioner in mutation proceeding, which was in accordance with possession and gave effect to what was *prima facie* a valid will of the deceased owner of the land, should be upheld in revision, the determination of the validity of the will being a question for Civil Courts only.

Revision against the order of the Commissioner, Lahore Division:

ORDER.

Under the second proviso to S. 13 of the Land Revenue Act, the Commissioner's order in this case is final and only a revision application lies. There are no grounds for entertaining such an application. This is a mutation case and the Commissioner's order is in accordance with possession, and gives effect to what is *prima facie* a valid will made by the deceased owner of the land. The only question that could be argued before me is the validity of the will, and that is a question that can only be decided in the Civil Court. If, as is alleged in the petition, another son has been born to the applicant Shidev Singh since these proceedings began, no doubt a mutation, giving this second son a half share in Kartar Singh's share in the land, will be entered up in due course; that is a matter which does not require an order from this Court, for appropriate action to be taken.

The application is rejected. Applicant to be informed.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue.

No. 4 of 1926-27. (Decided on 5-11-1927.)

C. A. Barron, F. C.

BHAI CHAMAN SINGH and others.

Applicant.

Versus

SARDAR MOHAMMAD and others.

Other Side.

(i) **Redemption of Mortgages Act of 1913, S. 1, cl. (3)—applicability.**

Held, that the Act is inapplicable to a case where the area exceeds 30 acres and the mortgage money exceeds Rs 1,000

(ii) **Punjab Alienation of Land Act, S. 20—appearance of legal practitioner.**

Held, that counsels are not entitled to appear in the proceedings under the Act.

(iii) **Punjab Alienation of Land Act, S. 9—original mortgage of 1883—material variation of terms in 1906—Deputy Commissioner has power to order redemption.**

Where a mortgage of 1883 was materially varied in terms in 1906, and was treated as new mortgage rather than a mere continuation or renewal of the original mortgage, the Deputy Commissioner could justifiably order redemption thereof in a fit case.

Revision against the order of the Commissioner, Multan Division.

ORDER.

Counsel on both sides are agreed that the Redemption of Mortgages Act of 1913 cannot possibly apply in this case, as the area is much more than 30 acres, and the mortgage money exceeds Rs. 1,000. The Commissioner's reference to this Act in his order is not understood.

As the case falls under the Alienation of Land Act of 1900, Counsel are no longer entitled to appear, and retire from the proceedings.

Mr. Burton's order of 13-8-1926 must have been recorded before the facts of the case were before him. The mortgage, 1906, was not merely a continuation or renewal of the mortgage of 1883, but differed from it materially in several of its terms. It was, therefore, a new mortgage and the Act of 1900 applied to it. The redemption of this mortgage, the sum due on which was actually expected to have been completely repaid in 1908, was therefore perfectly justifiably ordered by the Deputy Commissioner in his order of 14-1-1926, and there are no grounds for entertaining this application for revision, which is rejected with costs.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue

No. 76 of 1926-27. (Decided on 21-10-1927).

King, F. C.

BALWANT SINGH.

Appellant.

Versus

GANPAT RAI.

Respondent.

Sufedposh-appointment by Deputy Commissioner—Commissioner to uphold appointment ordinarily.

The Deputy Commissioner, after careful consideration, appointed B. S. to be Sufedposh of the jail. The Commissioner preferred G. R. on the ground that G. R. is the son of the late Sufedposh and that G. R.'s father had done good recruiting service. Held, that these facts are not of such importance as to justify the Commissioner in varying the Deputy Commissioner's order and that the order of the Deputy Commissioner should be upheld.

Appeal from the order of the Commissioner of Lahore,

ORDER.

The question for decision here is whether the reasons given by the Commissioner for reversing the finding of the Deputy Commissioner are sufficient. The Deputy Commissioner, after careful consideration, has appointed Balwant Singh to be Sufedposh of the Jail. The Commissioner has preferred Ganpat Rai and among the grounds which he gives for his preference is the fact that Ganpat Rai is the son of the late. Sufedposh, the fact that Ganpat Rai is the son of the late Sufedposh is not to be taken into consideration against him but it certainly should not be taken in his

favour when it comes to be considered whether he should be appointed. It should certainly not (*ex majori*) be considered a good ground for reversing the finding of the Deputy Commissioner. The second ground is that Ganpat Rai's father has done good recruiting service. This fact was also before the Deputy Commissioner when he selected Balwant Singh and the importance to be given to it is a matter of opinion. I do not think that the fact is of such importance as to justify the Commissioner in varying the Deputy Commissioner's order. I think it would have been better if the Commissioner had upheld the Deputy Commissioner's order. I, therefore, accept the appeal and restore the order of the Deputy Commissioner. Parties will bear their own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate side

Revenue

No. 93 of 1926-27. (Decided on 26-11-1927).

King, F. C.

BAKHSISH SINGH and others.

Appellant

Versus

TARA SINGH.

Respondent,

Lambardar—appointment of conviction of claimant's brother—knowledge by the claimant of the commission of offence—Punjab Land Revenue Rules—rules 17 and 15 (d).

Where a claimant for Lambardari was found actually working the well when, his brother, a Lambardar, was caught under the Excise Act and convicted for the offence, held, that even though claimant could not be held to have been actually implicated in the offence yet there were chances that he knew all about the commission of the offence and that it would be a great mistake to appoint such a man to be a Lambardar.

Appeal from the order of the Commissioner of Lahore.

ORDER.

The rule contained in para 109 of the Excise Manual is wide enough to justify the exclusion of Tara Singh, the brother of the dismissed Lambardar Naurang Singh. In this case, Tara Singh was actually working the well when Naurang Singh was caught at the same place. Naurang Singh was subsequently convicted; and, even if Tara Singh cannot be held to have been actually implicated the chances that he knew all about what was being done are overwhelming I think it would be a great mistake to appoint such a man to be Lambardar. I think, the Deputy Commissioner acted rightly in excluding Tara Singh.

I, therefore, accept this appeal, and, cancelling the order of the Commissioner, I restore that of the Deputy Commissioner.

Appeal accepted.

CHETA v. BALJA
LAHORE HIGH COURT.
FULL BENCH

19

Appellate

Civil.

No. 2539 of 1925. (Decided on 25-5-1927)

Broadway, Fforde, Addison, Tek Chand and Dalip Singh, J. J.

CHETA

Appellant

Versus

BALJA and others

Respondents

—S. 77 (3) (d)-Proviso—Suit by person dispossessed from his tenancy and unsuccessful in his suit to contest his liability to ejectment—jurisdiction of Civil Court—whether S. 77 (33) applies.

A Civil Court has jurisdiction to try a suit brought by a person, who has been dispossessed from his tenancy after a notice issued to him under S. 43 of the Tenancy Act, and who has been unsuccessful in suit under S. 45 to contest his liability to ejectment, for possession of the land from which he has been ejected on the ground that he had a right of occupancy therein and S. 77 (3) (d) of the Act does not bar such a suit inasmuch as the person ceases to be a tenant, but where in suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall decline to proceed further and deal with a matter as laid down in S. 77 (3), and if a plea of *res judicata* has been taken to the effect that the trial of the above matter is barred by reason of the previous decision of the Revenue Court on the same point, and unless and until a decision of any matter "becomes necessary" for the final disposal of the suit, the Civil Court's jurisdiction would be maintained and it would, therefore, be for the Civil Court to decide whether the rule of *res judicata* bars any further inquiry into the matter indicated and it would only proceed to take action under proviso (1), if it held that it was not *res judicata*.

Miscellaneous appeal from the order of Senior Subordinate Judge, Kangra at Dharamsala.

Appellant :—by Mehr Chand Mahajan.

Respondents :—by Diwan Mehar Chand.

REFERENCE ORDER.

The order of Mr. Justice Fforde and Mr. Justice Addison, dated 6th July 1926, referring the case to a Full Bench.

The plaintiffs were tenants of 17 *kanals* 11 *marals* of land under the defendant landlord. The latter applied to a Revenue Officer for the service of a notice of ejectment upon the former under the provisions of S. 43 of the Tenancy Act. The tenants instituted a suit in the Revenue Courts under S. 45(6) of the Act to contest their liabilities to be ejected on the ground that they were occupancy tenants of the land. The final

result of this suit was that the tenants failed, the Revenue Court giving the landlord a decree for ejectment. In execution of that decree the tenants were ejected on the 13th June 1922.

The tenants then instituted a suit on the 6th January 1923, in the Civil Courts for possession of land on the ground that they were the occupancy tenants thereof. The trial Court following *Akbar Hussain v. Karam Dad etc.* (1), held that the Civil Courts had no jurisdiction and dismissed the suit. The lower appellate court followed *Parman v. Lhassu* (2) and held that the suit lay in the Civil Courts. It, therefore, remanded it for decision on the merits. Against this order the defendant has instituted this second appeal. The Judge in chambers before whom it was laid has directed that it should be heard by a Division Bench.

It is conceded that the only matter for decision in this suit is whether or not the plaintiffs are occupancy tenants. It is enacted, however, in S. 77 (3) (d) of the Tenancy Act that suits by a tenant to establish a claim to a right of occupancy shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which such a suit might be instituted. These words are very general. a proviso was added in 1912, the effect of which was that plaints properly brought in the Civil Courts had to be returned to be presented to the Revenue Courts if it became necessary (presumably on the pleas of defendant) to decide a claim of this description. The intention of the Legislature appears, therefore, to be that all suits involving a claim of the nature set up in this suit shall be tried and decided exclusively by the Revenue Courts.

It was held, however, by a Division Bench of this Court in *Parman v. Lhassu* (2) that a suit like the present did lie in the Civil Courts, because as the tenants had been dispossessed in due course of law in execution of a decree against them they could no longer be held to be tenants and thus the suit instituted by them could not be said to be a suit by tenants to establish a claim to a right of occupancy. The Full Bench decision of 1918 (1) was attempted to be distinguished in *Parman v. Lhassu* (2) on the ground that it dealt with the case of a tenant who had been forcibly dispossessed and who had, therefore, one year under S. 50 and S. 73 (3) (g) of the Tenancy Act to sue in the Revenue Courts. The Division Bench observed that there were certain remarks in the Full Bench judgment indicative of the view that an extenant could look for no relief outside the Revenue Courts but that some of those remarks appeared to go beyond the question actually before the Full Bench. The case before the Full Bench was one of forcible dispossession under S. 50 of the Tenancy Act which gives a tenant (a) who has been dispossessed without his consent of his tenancy otherwise than in execution of a decree or than in a pursuance of an order under S. 44 or S. 45, or (b) who not having

(1) 90 P. R. 1918 (F. B.) (2) 49 P. R. 1919,

instituted a suit under S. 54 (such a suit was instituted in the present case) has been ejected from his tenancy in pursuance of an order under that section and denies his liability to be ejected, the right to institute a suit within one year for recovery of possession of occupancy or for compensation, or for both. It was clearly held in *Akbar Hussain Karm Dad* (1), that in cases falling under S. 50 the tenant, or ex-tenant as might more properly be called, has only the one remedy, namely, to institute a suit within one year in the Revenue Courts. But it is difficult to see any distinction between cases coming within S. 50 and cases where a tenant has already failed in a suit under S. 45. The two sections are complementary. Section 45 allows a tenant to institute a suit to establish his right within two months of service of notice of ejectment upon him. If he does not institute it the Revenue Officer shall order his ejectment. If he institutes a suit and fails, his ejectment is decreed by the Revenue Court trying the suit. On the other hand, S. 50 provides (a) that if the tenant is not dispossessed in execution of a decree or an order under S. 44 or S. 45 but is dispossessed without his consent, or (b) that if the tenant is ejected in pursuance under of an order see S. 45 and not having instituted a suit under that section denies his liability to be ejected, he can sue for recovery of possession of occupancy within one year. The two sections thus cover every possible case, and the Full Bench decision of 1918 has laid down that the right of suit in the Revenue Courts under S. 50 of the Tenancy Act. The word "tenant" in the Act is sometimes used in the sense of "person claiming to be a tenant". This is obviously the meaning of the word in S. 50 and in S. 77 (3) (g). The present suit is for possession on the ground that the plaintiffs are occupancy tenants, that is tenants. The suit is thus in substance a suit by tenants to establish a claim to a right of occupancy within the meaning of S. 77 (3) (d). It would appear to be anomalous that a tenant, who has failed in a ? under S. 45 in a Revenue Court and has been ejected by a decree of that Court, is allowed to use in the Civil Courts on the same cause of action, whereas a tenant who has been forcibly dispossessed, or who not having instituted a suit under S. 45 has been ejected by order of a Revenue Officer under that section and denies his liability to be ejected, has only the right to sue in the Revenue Courts within one year of his dispossession and if this suit is unsuccessful cannot sue in the Civil Courts. If this view is correct, it would amount to direct encouragement to landlords to take wrongful possession from their tenants and not to ask for the service of notices of ejectment upon them in accordance with the statutory provisions. For these reasons, and in view of the Full Bench decision of 1918 (1), we are of opinion that the decision in *Parman v. Lahssu* (2) requires further consideration, and we, therefore, refer to a Full Bench of this Court the following question :—

Whether a Civil Court has jurisdiction to try a suit brought by a person, who has been dispossessed from his tenancy after a notice issued to him under S. 43 of the Tenancy Act, and who has been unsuccessful in a suit under S. 45 to contest his liability to ejectment, for possession of the land from which he has been ejected on the ground that he has a right of occupancy therein and whether S. 77 (3) (d) of the Act bars such a suit or not.

THE JUDGMENT OF THE FULL BENCH.

Broadway, J.—The suit out of which this reference has arisen was instituted in January 1923, by Baija and others as plaintiffs against Cheta as defendant.

The plaintiff claimed possession of 17 *kanals* 11 *marals* of land on the following allegations:—

(1) That they and their ancestors had held the land as occupancy tenants for more than 100 years.

(2) That, acting under the provisions of S. 42 (b), 43 and 45 of the Punjab Tenancy Act (XVI of 1887) the defendant had a notice of ejectment issued to the plaintiffs by the Revenue Officer.

(3) That the plaintiffs had, under S. 45 (6) of the said Act, instituted a suit contesting their liability to be ejected a suit that had been ultimately decided against them by the Revenue Courts and their ejectment decreed.

(4) That in execution of the decree they had been ejected.

The trial Court dismissed the suit, holding that the plaintiffs were "tenants" at the date of the suit and consequently the Civil Courts had no jurisdiction to try it. Reliance was placed on *Joti etc. v. May, etc.* (3) and *Akbar Hussin v. Karam Dad etc.* (1)

On appeal, the learned Senior Subordinate Judge relying on *Parman v. Lhassu* (2) and *Mahindar Singh etc. v. Allah Ditta* (4), came to the conclusion that the plaintiffs were not "tenants" and that the suit was cognizable by the Civil Courts and remanded the case accordingly.

Against this order of remand, the defendant, Cheta, preferred a second appeal to this Court, which came up for hearing before a Single Judge, who referred it to a Division Bench.

At the hearing before the Division Bench it was urged that the decisions in *Parman v. Lhassu* (2) and *Mahindar Singh v. Allah Ditta* (4) were in conflict with the view taken in *Akbar Hussain v. Karam Dad etc.* (1) and were not correct.

The Division Bench came to the conclusion that the decision in *Parman v. Lhassu* (2) required further consideration and in order to determine the

(3) 44 P. E. 1899 (F. B.)

(4) A.L.B. 1914 (Lah.) 539; 78 I. C. 348.

conflict of authorities referred the following question to a Full Bench:—

“Whether a Civil Court has jurisdiction to try a suit brought by a person, who has been dispossessed from his tenancy after a notice issued to him under S. 43 of the Tenancy Act, and who has been unsuccessful in a suit under S. 45 to contest his liability to ejectment, for possession of the land from which he has been ejected on the ground that he has a right of occupancy therein, and whether S. 77 (3) (d) of the Act bars such a suit or not ?

The first point for determination is whether persons in the position of the plaintiffs fall within the definition of “tenant” for if they do, it is clear that the Civil Courts have no jurisdiction.

In S. 4 (3) the expression “tenant” is defined as meaning “a person who holds land under another person, and is..... liable to pay rent for that land to that other person.. ..”

This definition was very carefully considered in *Joti, etc. v. Maya, etc.* (3) and it was held that “to establish the complete relation of landlord and tenant between two persons, within the meaning of the Tenancy Act, it is essential that two things shall concur, viz, (1) a right to enter upon and possess the land, and (2) an entry into possession. Upon entry and not before, the person having the right becomes a ‘tenant’ and ‘holds’ the land under the person called the landlord. But when once the person having the right has entered into possession, he does not merely by reason of a wrongful dispossession by the landlord or by a third person, cease to ‘hold’ the land under the landlord, and is not deprived of the character of ‘tenant’. The legal relation of landlord and tenant continues, notwithstanding the dispossession.”

That is to say a person in possession of land without the right to possess it does not ‘hold’ the land and is not a ‘tenant’ within the definition, while a person who has been in possession of land with the right to possess it continues to “hold the land” and to be a “tenant”, within the definition in spite of having been wrongfully put out of possession.

Sections 42 (b), 43 and 45 prescribe the procedure to be adopted for the ejectment of a tenant, i.e. a person in possession of land with the right to possess it, and it will be seen that the notice of ejectment is issued through or by a Revenue Officer.

On being served with the prescribed notice the person or tenant in possession may, while still in possession, obtain an adjudication as to his right to possess by bringing a suit within two months (S. 45 (6), or he may wait till he has been put out of possession by the Revenue Officer and then have this right to possess (and to possession) determined by bringing a suit within one year (S. 50).

Whichever course he elects to adopt the suit must be heard and

determined by a Revenue Court, and by a Revenue Court alone and in each case the person bringing the suit would be a 'tenant' within the meaning of the above definition, for though, in a case falling within the purview of S. 50, he would be out of possession, having once been in possession, notwithstanding his dispossession, he still a "tenant" and continues to be one until his right to possess—the other essential—has been adjudicated upon by a Revenue Court.

It seems to me clear that, in the circumstances above set out, it was the intention of the legislature to confine to the Revenue Courts the jurisdiction to hear and determine all questions in which the right of a person to possess land as a tenant was involved.

In this connection I would adopt the following remarks from the judgment of Chevis, J. In *Akbar Hussein v. Karam Dad etc.*, (1) :—" Now reading the Tenancy Act as a whole, that Act seems to me, when dealing with suits and applications to mark off certain classes of suits and applications as cognizable only by Revenue Officers or Revenue Courts. The cognizance of Civil Courts in all such cases is jealously excluded. See Ss. 76 (1) and 77 (3) of the Act. Certain matters are to be dealt with by Revenue Officers and no Court is to take cognizance of dispute or matter with respect to which any such application or proceeding might be made or had. Certain suits are to be heard and determined by Revenue Courts and no other Court is to take cognizance of any dispute or matter with respect to which any suit might be instituted."

It has been contended, however, that when a notice under Ss. 42 (b) and 43 has been served, if a suit is brought as provided by S. 45 (6), and the "right to possess" determined against the recipient of the notice and ejectment decreed by the Revenue Court—as soon as the decree is executed and the person in possession ejected he ceases to be a "tenant" within the definition and he can therefore have recourse to the Civil Courts and claim to be put into possession even if, before his claim can be decided, it becomes necessary for the Civil Courts to decide whether or not he has a right to possess. This contention finds support in *Nihal Singh v. Kaman, etc.*, (5), *Kharku v. Ditta* (6) and *Parman v. Lhassu* (2), and I may say at once that I am in agreement with the view that as soon as a person's "right to possess" as a tenant has been decided against him by a Revenue Court he ceases to be a "tenant." I also accept the contention that an act by which the jurisdiction of the ordinary Courts is taken away must be strictly construed. *Mst. Kama v. Bhajan Lal, etc.*, (7).

Further I think that in order to ascertain the nature of a suit the general rule is that the allegations in the plaint must, primarily, be looked

(5) 9 P. R. 1883 (F. B.)

(6) 70 P. R. 1893.

(7) 45 I. C. 654.

to and that these allegations govern the question of jurisdiction, and, assuming that *Nihal Singh v. Kaman, etc.* (5) and *Khanku v. Dittu, etc.*, (6) were correctly decided. I would be prepared to hold that the Civil Courts would have jurisdiction to entertain such a suit whatever the ultimate fate of the suit might be.

I do not, however, think it necessary to discuss these two decisions as they were arrived at before Act III of 1912 was passed by which certain provisions were added to S. 77 (3) and it seems to me that the answer to the question referred depends, to a very large extent, on the interpretation to be placed on the first proviso then added.

Section 77 (3) runs as follows :—

"The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted."

And among the suits thus taken out of the jurisdiction of the Civil Courts are "Suits by a tenant to establish a claim to a right of occupancy.....sub-clause (d).

Inasmuch as the plaintiff in a suit instituted in the circumstances already described is not a "tenant" within the definition of that term, it may with some show of reason, be urged that such a suit not being by a "tenant" is not taken out of the jurisdiction of the Civil Courts and it seems to me that this was recognized by the Legislature and it was in order to meet this very situation that in 1912 the following proviso was added :—

"Provided that.—

(1) Where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by O. 7 r. 10, Civil Procedure Code, and return the plaint for presentation to the Collector."

Now it seems to me clear that the intention of the Legislature, in enacting this proviso, was to depart from the general rule whereby the allegations in a plaint primarily determine jurisdiction and are to be looked to in order to ascertain the nature of the suit. The suit the proviso seeks to affect, is one that is *prima facie* within the jurisdiction of the Civil Court in which it has been instituted, and therefore obviously refers to a suit which would ordinarily be triable by the Civil Court and provides that if in the course of the trial of that suit it becomes necessary to decide any matter which can under this sub-section be heard and determined by a Revenue Court alone, the Civil Court shall decline to proceed further and deal with the suit—(not the alone) in the manner laid down.

It seems to me that the word "matter" was designedly used in the contradistinction to "suit," and it was intended that although the "suit" as laid down was within the jurisdiction of the Civil Court if the pleadings raised any matter involving an issue which it became necessary to decide and the decision of which would necessitate an encroachment on the jurisdiction of the Revenue Courts, the whole suit and not just the matter—was to be referred to the Revenue Courts for decision.

This differentiation in the use of the words "matter" and "suit" appears to have been recognized by Martineau, J. in *Parman v. Lhassu* (2) when he says: "The matter which has to be decided here is whether the plaintiff has a right of occupancy and a suit instituted by him in respect of the matter would not be one falling within sub-section (3) as he is not now a tenant."

It was because the plaintiff had ceased to be a tenant that the suit was triable by a Civil Court but the matter to be decided in the suit was the existence of an occupancy tenancy. When *Parman v. Lhassu* (2), first came before Scott-Smith, J. he was of opinion that while the suit, as laid, was cognizable by the Civil Courts—this proviso applied and made it incumbent on those Courts to refer the suit to the Revenue Courts. His judgment is to be found printed in *Parman v. Ghanthu* (8) and at page 812, column 2 occurs the following:—"A tenant after dispossession from his tenancy is no longer a tenant, and, therefore, the present suit is not one by a tenant and is *prima facie* cognizable by a Civil Court, but the question which has to be decided is whether plaintiff who at the time of his dispossession was a tenant had a right of occupancy."

From this it is clear that Scott-Smith, J. realized that the plaintiff at the time of suing was not a tenant, and, with all respect, I find it difficult to follow him when later at page 123 of the Punjab Record 1919 (2) he says:—"I am now of opinion that I was mistaken in the view because I considered the plaintiff to be still a tenant after his dispossession."

It has been urged that even if the intention of the Legislature was as stated above this intention has not been carried out as the language employed is unhappy. While admitting that the drafting of this proviso is not as happy as it might be, it seems to me, after careful consideration, that the intention has been given effect to, and that in cases of this nature the proviso to S. 77 (3) is applicable and renders it necessary for the Civil Court to act thereunder. But, inasmuch as this proviso seeks to take away the jurisdiction of the ordinary Courts, it must be strictly construed and every word it contains examined and given effect to and I consider that it is not the mere raising of a plea that would involve an issue on a matter which requires to be heard and determined by a Revenue Court

alone that affects the jurisdiction of the Civil Court, but that jurisdiction is only taken away when, and if it becomes necessary to decide such an issue in order to decide the suit.

Unless and until a decision of such a matter becomes necessary for the final disposal of the suit the Civil Court's jurisdiction is maintained, and it is for that Court to decide all other questions that arise including the question whether the rule of *res judicata* bars any further enquiry into the matter pleaded.

My answer to the question referred is, therefore, that such a suit is within the jurisdiction of the Civil Courts and is not barred by S. 77 (3) (d), but that the Civil Courts would have, to deal with it in accordance with the procedure prescribed by the proviso to S. 77 (3) of the Tenancy Act as above indicated.

Florde J.—I have had the advantage of reading the judgment delivered by my brother Broadway, with which I find myself in agreement; and I have nothing to add.

Addison J.—The question referred for decision is given in the judgment of my brother Broadway.

The Punjab Tenancy Act has enacted a complete set of provisions under which a tenant can contest his liability to be ejected by his landlord on the ground that he is an occupancy tenant, etc., while the Revenue Courts have been given exclusive jurisdiction to decide these suits. This is not disputed, but it has been for long a vexed question whether the tenant can sue in the Civil Courts after he has availed himself of his remedies under the Punjab Tenancy Act or has failed to avail himself of them within the time fixed.

The plaintiffs were tenants of a certain area of land. Their landlord applied to a Revenue Officers for service of a notice of ejectment upon them under the provisions of S. 43 of the Tenancy Act. The tenants instituted a suit in a Revenue Court under S. 45 (6) of the Act to contest their liability to be ejected on the ground that they were occupancy tenants of the land. The tenants failed in their suit and their ejectment was therefore decreed by the Revenue Court. This decree was executed on the 13th of June 1922. The tenants then instituted the present suit in the Civil Courts for possession of the same land on the ground that they were the occupancy tenants thereof. The trial Court followed *Akbar Hussain v. Karam Dad* (1) and dismissed the suit, holding that the Civil Courts had no jurisdiction. The lower appellate Court followed *Parman v. Lhasu* (2) and held that the suit lay in the Civil Courts. It was, therefore, remanded for decision on the merits. Against this order a miscellaneous appeal was presented in this Court and the Division Bench before which it came referred the question to a Full Bench for decision.

If the tenants had not availed themselves of their right under S. 45 (6) of the Act to institute a suit to contest their liability be ejected on the ground that they were occupancy tenants before they actually were ejected, they would have been ejected under S. 45 (5) of the Act, not by a decree of a Revenue Court but by order of a Revenue Officer. They would then have had the right under S. 50 of the Tenancy Act to institute a suit in the Revenue Courts for recovery of possession of their occupancy within one year. Section 50 runs as follows :—

“In either of the following cases, namely, (a) if a tenant has been dispossessed without his consent of his tenancy or any part thereof otherwise than in execution of a decree or than in pursuance of an order under S. 44 or S. 45, or (b) if a tenant who, not having instituted a suit under S. 45, has been ejected from his tenancy or any part thereof in pursuance of an order under that section denies his liability to be ejected, the tenant may, within one year from the date of his dispossession or ejection, institute a suit for recovery of possession of occupancy, or for compensation or for both.”

S. 45 and 50 thus cover every possible case of the dispossession of a tenant and the two sections are complimentary. If a tenant is wrongfully dispossessed he can, under S. 50 (a) institute a suit within one year to recover possession. If a notice has been served upon him under S. 43 he can either institute a suit under S. 45 (6) to be declared an occupancy tenant before he is ejected or if he does not do so he can within one year after ejection institute a suit under S. 50 (b) to be restored to possession on the ground that he is an occupancy tenant. In the case before us the tenants instituted their suit in the Revenue Courts under S. 45 (6) that is, before they were actually ejected.

The relevant part of S. 77 giving the Revenue Courts exclusive jurisdiction to decide certain suits is as follows :—

“(3) The following suits shall be instituted in and heard and determined by Revenue Courts and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :—

Provided that :—

“(1) Where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can in this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by O. 7 r. 10, Civil Procedure Code and return the plaint for presentation to the Collector;.....

Second group.

(d) suits by a tenant to establish a claim to a right of occupancy or by a landlord to prove that a tenant has not such a right; (e)

suits by a landlord to eject a tenant; (f) suits by a tenant under S. 45 to contest liability to ejectment when notice of ejectment has been served; (g) suits by a tenant under S. 50 for recovery of possession of occupancy or for compensation or of both;.....

(1) any other suit between landlord and tenant arising out of the ease or conditions on which tenancy is held."

The first suit instituted by the present plaintiffs fell within S. 77 (3) (f) and was only cognizable by a Revenue Court. They failed in that suit and were therefore ejected by decree of the Revenue Court. The question is whether they can reagitae the same question in the Civil Courts, *i. e.*, whether they can now sue in the Civil Courts for possession of the land on the ground that they are occupancy tenants, it having been held by the Revenue Court which decreed their ejectment that they were not.

The Full Bench judgment in *Akbar Hussain v. Karam Dad* (1) is important. The effect of that decision is that if a tenant is dispossessed in such circumstances that S. 50 of the Tenancy Act applies he can only sue in the Revenue Court for recovery of possession or for compensation within one year and on the expiry of that year cannot sue in the Civil Courts. This decision never ruled *Imam Din v. Feroz Khan* (9) but only distinguished the previous Full Bench decision, *Kesar Singh v. Nihal Singh* (10). Though the last named decision is not expressly overruled, the reasoning of the judgment in *Akbar Hussain v. Karam Dad* (1) is opposed to the reasoning in it. I have no doubt that *Akbar Hussain v. Karam Dad* (1), was correctly decided. S. 50 of the Tenancy Act provides the remedy for a tenant who has been dispossessed in either of two ways and S. 77 (3) (g) clearly provides that such suits shall be instituted in and heard and determined by Revenue Courts alone. S. 50 also lays down that a tenant has only a year from the date of dispossession within which he can institute his suit. At the end of the year his status does not change in any way; he still remains a tenant who has been dispossessed. No suit, therefore, can ever be instituted by such a tenant in the Civil Courts, while he has only one year to sue in the Revenue Courts. The same view has been taken in all similar cases decided since the date of the Full Bench decisions in question *e. g.*, in *Mahindar Singh v. Allah Ditta* (4), *Nand Ram v. Ishar* (11) and *Piran Ditta v. Lal* (12). It follows that, if a tenant, who has been dispossessed of his tenancy in the circumstances mentioned in S. 50 of the Punjab Tenancy Act allows the period of one year prescribed by that section to expire without bringing a suit in the Revenue Courts, he by the combined operation

(9) 64 P. R. 1898
(11) 92 I. C. 597.

(10) 45 P. R. 1891 F B.
(12) 96 I. C. 479

of Ss. 50 and 77 (3) (g), is debarred from bringing a suit for recovery of possession or for compensation or for both in the Civil Court.

The Full Bench decision, *Akbar Hussain Karam Dad* (1), however does not cover the case where a tenant has instituted his suit under S. 45 (6) of the Act prior to being ejected by decree of the Revenue Court which dismissed his claim to occupancy rights. In a case of this kind, *Parman v. Lhassu* (2), it was held, following *Kharhu v. Ditta* (6), such a person after he has been successful in his suit in the Revenue Court can sue for possession the Civil Courts on the ground that he has a right of occupancy. It was further held that S. 77 (3) (a) has no application to such a suit. The Full Bench decision, *Akbar Hussain v. Karam Dad* (1), was distinguished and was distinguishable though some of the reasoning in it was not. It is clear, however, from the judgment of Le-Rossignal, J. in the Full Bench case that he considered that a suit, such as the one now before us, was not cognizable by the Civil Courts. S. 77 (3) (g) and (i) appeared to him to cover all conceivable causes of litigation between a landlord and his tenant *qua* tenant and his conclusion was that an ex-tenant in that capacity could look for no relief outside the Revenue Courts and that Civil Courts could hear his plaint only if he set forth a claim to relief in a capacity other than that of an occupancy tenant. The same Judge sitting in Chambers held in *Lakh v. Khushi Ram* (13) that a suit like the present fell within S. 77 (3) (d) of the Act.

To return to S. 77. It seems to me clear that S. 77 (3) (d) legislates for suits by a tenant in possession to establish a claim to a right of occupancy. Such a suit can be brought by a tenant, who is not threatened with ejectment, on the ground that he satisfies the conditions of Ss. 5, 6, or 8 of the Tenancy Act. I do not think that there is any escape from the conclusion that this is the right interpretation. A tenant is defined in S. 4 (5) of the Act. as a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that other person. That meaning which implies possession and liability to pay rent must be attached to the word "tenant" where it occurs in the Act unless the contrary is clearly indicated, as is the case in Ss. 50 and 77 (3) (g). It follows that the present suit is not one falling within S. 77 (3) (d) and to that extent *Parman v. Lhassu* (2), was correctly decided. Nor do I think that this is a suit falling within S. 77 (3) (i) as it is not a suit between landlord and a tenant arising out of the conditions on which a tenancy is held. Similarly, it is not a suit by a tenant under S. 45 to contest his liability to ejectment when notice of ejectment has been served

(13) 105 I. C. 488.

and thus does not fall within S. 77 (3) (f). But the present plaintiffs have already instituted a suit under S. 77 (3) (f) and S. 45 (6) and have failed in that suit to establish their right of occupancy. The present suit therefore does not fall directly under the second group of sub-clauses in S. 77 (3) (3) of the Act.

There is little doubt that the Punjab Tenancy Act intended that there should be no subsequent suit in a Civil Court and in fact it gives the tenant a right to establish his claim to occupancy in the Revenue Courts in all circumstances. Owing to the wording of S. 50 and S. 77 (3) (g) of the Act it is clear that a tenant or rather an ex-tenant, entitled to sue under those sections, cannot subsequently sue in the Civil Courts. Though it was probably intended that such should be the case also when a suit had been decided under S. 45 (6) by a Revenue Court with exclusive jurisdiction under S. 77 (3) (f) and that there should be no further suit in a Civil Court, the Act has failed to provide a specific provision to the effect that a subsequent suit cannot be brought in the Civil Courts. It follows that such a suit can be instituted in and entertained by a Civil Court, but it still remains to be decided whether under proviso (1) to the section the Civil Court is precluded from trying it.

In my opinion, proviso (1) which was added by Act III of 1912, will apply, and the Civil Court will be precluded from proceeding with the trial of the suit, if it "becomes necessary" to decide the matter which is raised by the plaintiffs themselves, namely, whether they are in fact tenants and whether, as such they have established a claim to a right of occupancy. That is their cause of action in their suit for possession. Thus though the suit does not fall within S. 77 (3) (d) because the plaintiffs are not in possession, the above mentioned matter would if it becomes necessary to decide it. In the present case however, a plea of *res judicata* has been taken to the effect that the trial of the above matter is barred by reason of the previous decision of the Revenue Court on the same point. It seems to me that unless and until a decision, of any matter "because necessary" for the final disposal of the suit the Civil Court's jurisdiction would be maintained and it would, therefore, be for the Civil Court to decide whether the rule of the *res judicata* bars any further inquiry into the matter indicated, and it would only proceed to take action under proviso (1) if it held that it was not *res judicata*. In the latter case, the Civil Court, after endorsing upon the plaint the necessary particulars required by the proviso, should return the plaint for presentation to the Collector. That is my reply to the question which has been referred to us.—

Teke Chand J.—I have read the judgments, which my brothers Broadway and Addison propose to deliver, and have very little to add. I agree that

the plaintiff in the suit, out of which this reference has arisen, is not a "tenant" as defined in S. 4 (5) of the Punjab Tenancy Act, and therefore, the suit as instituted is not one by a "tenant to establish a right of occupancy and the Civil Court had jurisdiction to entertain it. I also agree that the plea of *res judicata* raised by the defendant, must be decided by the Civil Court before action, under the proviso to S. 77, can be taken. If the Civil Court decides that the decision of the issue as to the status of the plaintiff is *res judicata* by virtue of the former decision of the Revenue Court, it will dismiss the suit. But if for some reason it finds that the trial of the matter is not barred by the rule of *res judicata* it will then "become necessary" to try and adjudicate upon the claim of the plaintiff to establish a right of occupancy. This is a matter the trial and decision of which is reserved by the Legislature exclusively for the Revenue Courts and the Civil Court will, in that event endorse the plaint as required by the proviso and send it to the Revenue Court.

It will be seen that the decision of some of the issues that arise in the suit will be given by the Civil Court, and that of others by the Revenue Court. This is obviously not a very satisfactory state of affairs. But there seems to be no escape from this conclusion having regard to the peculiar nature of the proviso to S. 77 of the Tenancy Act and the well established canons of interpretation of statutory provisions which trench upon the jurisdiction of ordinary courts. There is no doubt that Act III of 1912 has succeeded in removing to a very small extent the serious anomalies in the law which were so ably and lucidly brought out by Sir Henry Rattigan and Sir Donald Johnstone in *Haji Muhammad Bakhs. v. Bhagwan Das* (14) in consequence of which the proviso S. 77 was enacted. Those anomalies still exist to a large degree and cannot look with equanimity on the existing state of the law on the subject. What is substantially one dispute has to be tried and adjudicated upon piecemeal by courts of different jurisdictions subject to different supreme authorities and the plaint has to be sent backward and forwards before a final decision is reached. In such a state of things, the right of the parties must of necessity, remain in a state of uncertainty and suspense for an unnecessarily long time and there is the danger of conflicting and inconsistent orders being passed. The situation becomes still more complicated and embarrassing when one finds that appeals from the decision given by the Civil Court on some issues arising in the same suit would lie to the District Judge and the High Court and that on others given by the Revenue Court to the Collector, Commissioner and the Financial Commissioner.

The Courts, however, are powerless to remedy such a state of things. Their function is only to interpret the law as it stands on the Statute Book. The legislature alone can set matter right and it is a matter for serious consi-

deration whether the time has not come when the whole question of the separate jurisdiction of Revenue Courts, which was created for the first time in the Punjab in 1884 and which was extended and enlarged in 1887 and again in 1912, should not be re-examined and whether at least the law relating to appellate subordination of Revenue Courts should not be brought into line with that which has worked so well in the other provinces.

Dalip Singh, J.—The first question to be decided in this reference is whether the Civil Court has jurisdiction to entertain a suit of the present kind. It seems to me that the Civil Court clearly has jurisdiction to entertain the suit because the only clause in the Tenancy Act under which this suit might be excluded from the cognizance of the Civil Court is 77 (3) (d). Now, the relevant portion of 77 (3) (d) excludes from the cognizance of a Civil Court "suits by a tenant to establish a claim to a right of occupancy." To my mind, a suit for possession on the basis that the claimant is an occupancy tenant is not a suit by a tenant to establish a claim to a right of occupancy. It is true that the cause of action of such a suit is the claim by a person to be an occupancy tenant, but the suit itself is not a suit to establish a claim to right of occupancy but is a suit for possession on the basis of being an occupancy tenant. To give an example, a suit by a person for rent is a suit for money and though the cause of action undoubtedly must be that the relationship of landlord and tenant exists between the parties the suit cannot be said to be a suit to establish a claim to be a landlord or to establish the relationship of landlord and tenant. I would therefore consider that this clause refers only to declaratory suits. I am further strengthened in this position by considering the definition of the word "tenant" in this Act. Tenant is defined in S. 4 (5) as meaning "a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that other person." In the absence of any indication to the contrary this definition must be held to apply wherever the word 'tenant' is used in the Act. A person, therefore, who is not holding land is not a tenant within the definition, though the legal relationship of landlord and tenant may still be existing between himself and his landlord. In S. 77 (3) (d) a suit by a tenant is therefore a suit by a person who is still in possession of the land to establish a claim that he is an occupancy tenant, in other words it is a suit wherein the tenancy exists in the sense that the person is actually in possession of the land as tenant and the question is what is the nature of that tenancy. Such a suit would again be a declaratory suit and not a suit for possession. From both these points of view therefore it is clear to me that the Civil Court has jurisdiction to entertain the suit.

The next question to be decided is whether the Civil Court can try the suit and, if so, how far. For this question it is necessary to consider the meaning of the proviso to S. 77. In order to do this, we must

consider the state of the law before this proviso was introduced. S. 77 (3) reads as follows :—

“The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted.” This sub-section, as I understand it, shows that certain suits were to be instituted in and heard and determined by Revenue Courts and no Court could take cognizance of any dispute with respect to which a suit of the nature specified might be instituted. It follows, therefore, that if a person was sued for damages for cutting trees and he pleaded that he was person in possession of the land as occupancy tenant then the defence raised was a dispute with respect to which a suit might have been instituted by him because under S. 77 (3) (d) if he was a tenant, he might have asked for a declaration to a right of occupancy and his defence, was really equivalent to asking for such a declaration. This defence, was, however, excluded from the jurisdiction of the Civil Courts. The suit itself however was not excluded from the jurisdiction of the Civil Courts. The result was that sometimes the Civil Courts held that they were debarred from taking cognizance of the plea and proceeded to decide the case against the defendant or they held that they were capable of entertaining the plea and proceeded to decide whether the person in possession was or was not an occupancy tenant, thus creating a double jurisdiction and practically nullifying the law that no Court except a Revenue Court should take cognizance of such a dispute. This led to the enactment of the proviso. It is obvious that the defendant might raise other pleas besides the particular plea of occupancy tenant, but the Legislature considered that all such pleas whether they fell within the definition of S. 77 (3) or not should be decided by the Revenue Courts provided one of the pleas was such that a suit might have been instituted in the Revenue Courts about it. This was the object of the proviso. The proviso, however, did not enlarge the matter in dispute which might be considered by a Revenue Court because it expressly says that “where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court.”

In order, therefore, to determine what the matter was we would have to refer back to sub-section (3) and see whether the matter was such with respect to which a suit falling under those sub-sections could be instituted. Therefore, it seems to me that except in the cases provided under S. 77 (3) (g) suits for possession by a person who was out of possession on the ground that he claimed to be an occupancy tenant could still be tried by a Civil Court. Different cases would arise, *e.g.*, where the alleged tenant was in possession and the other in which the alleged tenant was not in possession, and again where there had been a decision of the Revenue Court on

the point, or where there had been no such decision of a Revenue Court. In cases where the alleged tenant was in possession, the proviso, would seem to show that the Revenue Courts alone have jurisdiction to try the suit and the Civil Courts would have to send all such suits whether the matter arose on the frame of the suit or whether it arose on account of the defence to the Revenue Courts for decision. If, however, the suit was cognizable as framed by a Civil Court then if the plea raised a question in respect of which a suit might be instituted in the Revenue Court then the Civil Court would have to despatch the plaint to the Revenue Court. If, however, the person was out of possession then except in cases under S. 77 (3) (g) other case could hardly arise and the Civil Court would ordinarily have jurisdiction to proceed with the suit. If, however, the Revenue Court had previously decided that the person was or was not an occupancy tenant, the matter would be *res judicata* ordinarily between the parties and the Civil Court would only be able to hold that the matter was *res judicata* unless it could come to the conclusion that for one reason or another the matter was not *res judicata*. If it came to such a conclusion which could only occur very rarely then in a case like the present the Civil Court would proceed to decide the suit because no suit could be instituted in the Revenue Court about the matter. From this point of view the point becomes very academic, but this is the only solution which prevents great anomalies in procedure arising, and also, as I consider, carried out the real intention of the legislature. I cannot believe that the legislature meant that the Revenue Courts should have co-ordinate jurisdiction with the Civil Courts wherever any question of, or any right arising out of, land was concerned. I would, therefore, hold in the present case that the Court had jurisdiction to try the suit and to decide the issue whether it was *res judicata* or not *res judicata*. Looking at the matter from another point of view the words used are 'becomes necessary' and not 'is necessary.' Now, it is not necessary to decide whether the tenant in the present case is an occupancy tenant or not until it is first decided whether the matter is *res judicata* or not, and this question will be decided, therefore, by the Civil Court first. Secondly, on general principles, where the question is whether a Court of special jurisdiction has acted within its jurisdiction or not, this question must always be decided by the Court of general jurisdiction, and the question whether the matter is *res judicata* or not is practically concluded by the decision that the Court of exclusive jurisdiction acted within its jurisdiction or not. I, therefore, see no difficulty in interpreting the proviso from this point of view, whereas after considering various alternative solutions it seems to me that any other solution lands us in great difficulties.

Reference answered in the affirmative.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 47 of 1926-27 (Decided on 11-5-27)

Townsend, F. C.

MOHAMMAD DIN

Appellant

Versus

SHAH MOHAMMAD Alias Shahu.

Respondent.

Punjab Land Revenue Act (XVII of 1887), S. 28—succession to office of lambardar—candidate of senior branch—conviction of father years back for a not very serious offence—no bar to appointment as Lambardar.

Where the person seeking succession to the office of a Lambardar belonged to the senior branch, his father's conviction as far back as 1914, for a not very serious offence was held to be no bar to his appointment as Lambardar.

ORDER.

I have heard parties by counsel. I consider Commissioner was quite right. Respondent belongs to the senior branch and I do not consider that his father's conviction of 1914 for a not very serious offence can be held to debar him from appointment now as Lambardar.

The Collector's position is not quite logical. He held that respondent, though unfit to be Lambardar, was fit to be *Sarbarah* Lambardar:—

I reject appeal.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side

Revenue.

No. 153 of 1926-27 (Decided on 22-10-1927)

King, F. C.

KHUSHI RAM and other

Applicants

Versus

ATMA NAND

Other Side.

Punjab Land Revenue Act, S. 36, sub-section (2)—question of title—if can be decided in mutation proceedings—exception—value of revenue records.

The revenue records are intended to be a picture of the existing facts. Ordinarily, the question of title is not decided by mutation proceedings and it would be wrong to decide it in the course of such summary proceedings except in certain exceptional cases such as those contemplated by S. 36, sub-section (2).

Case forwarded by the Collector of Hoshiarpur.

ORDER.

The facts of this case are fully stated in the order of reference. The revenue records are intended to be a picture of the existing facts. Ordinarily, the question of title is not decided by mutation proceedings

and, it would be wrong to decide it in the course of such summary proceedings except in certain exceptional cases such as those contemplated by S. 36, sub-section (2). In the present case one thing is clear that whatever may be the title of the petitioner he is certainly not in possession as occupancy tenant of the land in dispute. That land appears to be cultivated by non-occupancy tenant under the owner. That being so, there is no reason why I should, at this late stage of the case, exercise my powers of revision either in order to put the petitioner in possession *qua* occupancy tenant or else to have an entry made in the revenue records which will certainly not be in accordance with the facts. It is true that there has been a decree giving petitioner possession as occupancy tenant of the land in dispute it is true also that. That decree appears to have been executed, though it is not very clear how it was executed. It certainly does not seem to have been executed by giving the petitioner physical possession of the land in dispute, and it is not quite clear what other kind of possession he received. The Collector calls the possession symbolical possession, but it is by no means certain that anything happened except the signing of a receipt by the decree-holder admitting that he had received possession. Such being the case I see no reason why, at this late stage, his name should be entered as occupancy tenant of the land in dispute. If it is so entered, the only benefit that will accrue to him will be the possible presumption of correctness which attaches to the records. He will not be given possession of the land and it is doubtful if he will be able to recover possession by way of suit. On the other hand, the entry to be made in the records will be one which is not in accordance with facts and the presumption of correctness will be very easily rebutted. The change is certainly not agreed to by the parties, and therefore it does not seem to me to be an entry which should be made under S. 37 of the Land Revenue Act. For these reasons I refuse on revision to vary the existing records.

Revision refused.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 83 of 1926-27. (Decided on 22-10-1927.,)

King, F. C.

SHER AHMAD

Appellant

Versus

CROWN

Respondent.

Lambardar—Headman dismissed—Collector's discretion not to appoint.

The Collector may refuse to appoint any of the heirs of a Headman who has been dismissed for a serious offence, to the post of a Lambardari.

Appeal from the order of the Commissioner of Lahore Division.

ORDER.

The Collector's order in this case is not very clear. He has explained it in his demi-official letter dated the 29th of July 1927 to the Commissioner. Reading the order one would suppose that this reason for appointing Sher Ahmad as Lambardar was because he (Sher Ahmad) had not been convicted and is not on Register X. His letter explains that what he meant was that Sher Ahmad's father Barkat Ali had not been convicted and was not on Register No. X. The case is a somewhat peculiar one. Rule 17 (2) (b) states that the Collector may refuse to appoint any of the heirs of the headman who has been dismissed for a serious offence. Ali Gohar, the deceased Lambardar, was not dismissed for a serious offence, but his next heir, Barkat Ali, should have been excluded from the Lambardari, and has been properly excluded from the Lambardari, because he is guilty of helping bad characters. It is doubtful whether the fact of Barkat Ali's exclusion should operate to exclude also his son Sher Ahmad. If Barkat Ali had been Lambardar and had been dismissed, no question would have arisen because Sher Ahmad could clearly have been excluded under S. 17 (2) (b), but Barkat Ali was not a Lambardar and it is doubtful therefore, whether this rule is applicable. Without going further with this argument I may say that the Deputy Commissioner's solution seems to me to be a suitable one. Sher Ahmad is appointed Lambardar but the actual duties of Lambardar will be performed by a substitute as long as there is any chance of Sher Ahmad's being influenced by his disreputed father. I accept the appeal and restore the order of the Collector.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 79 of 1926-27 (Decided on 22-10-1927).

King, F. C.

CH. SOBHA SINGH

Appellant

Versus

HUKAM CHAND

Respondent.

Lambardar—appointment of—religious faith—electoral roll not a conclusive evidence of.

Held, that electoral roll was not a conclusive evidence of the religion of the person who was a claimant for the office of Lambardar, where preference was to be given to a person following a certain religion

Appeal from the order of the Commissioner of Multan Division.

ORDER.

In this case the Commissioner has varied the order of the Deputy Commissioner appointing Sobha Singh to be Lambardar of Okara. The

Deputy Commissioner in his order stated that the person to be appointed a Lambardar should preferably be a Hindu if a Muhammadan were not available. After considering the claims of all the Muhammadan candidates and deciding against each one of them, the Deputy Commissioner appointed Sobha Singh as Lambardar giving him preference over another Hindu candidate Hukam Chand. On appeal to the Commissioner, the Commissioner decided that Sobha Singh was a Sikh and not a Hindu and he, therefore, gave the appointment to the second choice of the Deputy Commissioner, namely, Hukam Chand. In the appeal before me now it is alleged that the Commissioner is wrong in his finding that Sobha Singh is a Sikh and that in fact he is a Hindu, and, that, therefore, there is no reason why the Deputy Commissioner's order should have been varied. The whole question turns on whether Sobha Singh is or is not a Sikh. The main argument in favour of his being a Sikh, which is alleged by Hukam Chand and which has been accepted by the Commissioner, is the fact that in the electoral roll for the Legislative Council Sobha Singh's name has been entered among the Sikhs. Sobha Singh replies to this that the electoral roll is an official publication and that he is not responsible for the entry of his name in the roll. When his name was entered he does not appear, however, to have refrained from exercising his right to vote for a Sikh candidate. I think that, although the matter is not altogether free from doubt, the Deputy Commissioner was right to treat Sobha Singh as a Hindu and not a Sikh. There is no allegation in the grounds of appeal that Sobha Singh was ever admitted into the Sikh religion and it is certain that at the present moment Sobha Singh is clean shaven and his hair is cut. Counsel for the respondent has himself admitted that among the Sikhs it is considered to be a great act of apostasy for a man once admitted to Sikhism to abandon the outward and visible signs of his race. Such a man is usually held in small esteem by his neighbours and the fact that he is an apostate is well known and not easily concealed. I have no doubt that if Sobha Singh had at any time taken the *pahul* the fact of his subsequent renunciation would have been treated as scandalous and it would not have been possible for him to conceal the fact that he was an apostate from the Sikh religion. It cannot be doubted that all the facts that are likely to tell against Sobha Singh have been very carefully examined by his opponent and nothing of this kind has been alleged against him. Although, therefore, Sobha Singh's name appeared in the electoral roll as a Sikh and although Sobha Singh exercised his right to vote for a Sikh in consequence of the appearance of his name in the Sikh Electoral Roll, I am of opinion that that fact is discounted by the non-appearance of his name in the roll of electors for Sikh Shrine, the roll on which a man's name can only be added on his declaring himself to be a Sikh. All the other facts available confirm me in the opinion that Sobha

Singh is undoubtedly a Hindu and I have no hesitation, therefore, in deciding that the Collector was right in selecting him as Lambardar, for in other ways he is undoubtedly the best candidate. I accept the appeal and restore the order of the Deputy Commissioner and Collector.

The parties will pay their own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 205 of 1925-26. (Decided on 24-1-1927.)

Barron, F. C.

ABDUL KHALIQ KHAN and others

Applicants

Versus

CH. MOHAMMAD ISMAIL KHAN

Other Side.

Registration Act, S. 17—agreement to sell land—if compulsorily registrable.

Agreements to sell are not compulsorily registrable under S. 17. 184 P. R. 1889; 16 P. R. 1895; 8 P. R. 1916. followed.

Case forwarded by the Commissioner of Lahore.

ORDER.

This is a mutation case forwarded by the Commissioner of Lahore for the revision of the order of the Sheikhpura, declining to entertain an appeal against the order of the Settlement Naib Tahsildar dated the 5th October 1926, sanctioning the mutation of 5 squares of land in chak 65/13 in the Nankana Tahsil in favour of Ch. Mohammad Ismail Khan as against Abdul Khaliq Khan etc. sons of Haji Abdul Haq Khan, Pathan of Parang, District Peshawar. After hearing counsel on both sides I reserved orders as I was doubtful whether I was in agreement with the Commissioner's view of the case.

Haji Abdul Haq Khan was the original *Abadkar* of the 5 squares of land in question. The case for Ch. Mohammad Ismail Khan was that on 14th December, 1916, Haji Abdul Haq Khan agreed to sell him the right to acquire proprietary rights in this tenancy and that in pursuance of this agreement Ch. Mohammad Ismail paid Haji Abdul Haq Khan Rs. 6,000, and undertook the liability of payment of the sum of Rs. 10,000 due in instalments to Government for the purchase of tenancy. The Commissioner has held that the agreement to sell being an unregistered deed was inadmissible in evidence, but this is not the case. It has frequently been held in the Punjab Chief Court that such agreements to sell are not compulsorily registrable S. 17 of the Registration Act—see *Partab Singh v. Karam Chand* (1) *Imam Baksh Khan v. Karam Shah and others* (2) and *Seraf Ali Khan v. Jagandhar Singh and another* (3). As this document

is admissible in evidence without being registered, have examined various other documents produced by counsel for the respondent. The first is a receipt dated 29th November, 1916, for Rs. 1,000 as earnest-money for the purchase of 5 squares of land received by Haji Abdul Haq Khan from Ch. Mohammad Ismail Khan through his agent Ahmad Khan. The second receipt bears the same date as the agreement to sell, and acknowledges the receipt of Rs. 3,000—Rs. 2,000 in cash and Rs. 1,000 the earnest-money as above. The third receipt is dated the 31st January 1917 and is for Rs. 3,000 paid by Ch. Mohammad Ismail Khan to Haji Abdul Haq Khan through his agent Ahmad Khan, thus completing the Rs. 6,000 which Haji Abdul Haq Khan was to receive under the agreement to sell. Then there are various receipts from the Jaranwala Tahsil regarding the payment of instalments of the purchase money each of the amount of Rs. 838-5-2 lodged at the Tahsil on various dates in 1918, 1919 and 1920 in the name of Haji Abdul Haq Khan by Ch. Mohammad Ismail Khan or his brother Ghulam Qadir Khan. These receipts would not be in the possession of the respondent unless he had, as he alleges, acquired the right to purchase the proprietary rights in the land from Haji Abdul Haq Khan. Then we have the settlement record of 1919-20 and the *Jamabandi* of 1923-24 in which though Haji Abdul Haq Khan's name continued to be entered in the *Malguzar's* column, the cultivation of the land was conducted by Ghulam Qadir Khan, brother of the respondent through various subordinate tenants. All this documentary evidence goes to show that the facts of the case are that Haji Abdul Haq Khan, who died in the beginning of 1925, after he had received the Rs. 6,000 in December 1916, and January 1917, retired to his village Parang in the Peshwar District and took no further interest in this land, and severed his connection from it. These mutation proceedings began in November 1921 after payment of the instalments of the purchase money by the respondent. In April 1922 interrogatories were sent to the Haji to which he replied denying the allegation that he had sold the land, but he took no steps to be present or to be represented by his sons during the mutation proceedings, thus confirming the view that he regarded his connection with the land at an end. He certainly was not in possession of it in 1919 or 1923-24. The order sanctioning the mutation was passed on 5th October 1924 and no appeal was lodged up to 15th July, 1925. It is not quite clear whether the Haji who lived for some months after the date of mutation order received intimation of it or not. His sons, who are the appellants, of course deny receipt of any such intimation, but this does not seem to me to be very material considering the facts of the case and the severance of the Haji's connection with the land since the end of 1916.

To direct further enquiry into the matter would only be a waste of time and cause unnecessary expense to the parties.

On these facts it appears that the order sanctioning mutation of the land in favour of Ch, Mohammad Ismail Khan was correct and correctly represents the facts. I therefore see no reason for revising it or for directing any further proceedings in the matter. The mutation order will stand confirmed, and can be given effect to in the land revenue records. I make no order as to costs.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 18 of 1926-27. (Decided on 20-10-1927.)

King, F. C.

CH. AMIR SINGH

Appellant

PANDIT RISHI PARKASH

Versus

Respondent.

Zaildar—promoting a Sufedposh—opportunity not to be lost.

Whenever an opportunity arises for promoting a Sufedposh to be a Zaildar, it is well that the opportunity should be taken.

Appeal from the order of the Commissioner of Ambala Division.

ORDER.

The only question for decision in this case is whether the Commissioner was justified in upsetting the order of Deputy Commissioner appointing Amir Singh to the Zaildari vacated by the death of R. S. Pandit Rabi Datta Singh. The Deputy Commissioner has written a very careful order and has summed up the respective merits of the two men. His facts are in no way impugned by the Commissioner's order, but the Commissioner has thought that greater weight should have been attached to the fact that Rishi Parkash, respondent, owns a very much larger area of land than Amir Singh and that his father was a good Zaildar. On the other hand Amir Singh himself has done good military services and he is a Sufedposh and whenever an opportunity arises for promoting a Sufedposh to be a Zaildar, it is well that that opportunity should be taken. I think that it is irrelevant to bring into account the fact that Gaur Brahmans have not been appointed Zaildars in other Zails of the district or the fact that some rewards are due to Gaur Brahmans for their loyal services during the War. We have to consider the question of this Zail alone in this case and in the whole district. I am of opinion that the Commissioner ought not to have upset the Deputy Commissioner's order. I accept the appeal and confirm the order of the Deputy Commissioner appointing Amir Singh to be Zaildar. Parties to bear their own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 61 of 1926-27 (Decided on 21-3-1927.)

King, F. C.

MST. BHOLI and others

*Applicants**Versus*

MUNSHI MAN SINGH and others

Other Side.

**Punjab Tenancy Act, S. 88, C. P. C. (Act V of 1908), O. 22, r. 6—
joint and several relief against all defendants—death of one defendant—
legal representatives not brought on record within time—suit, if abates
against all—minority of plaintiffs—no bar for limitation.**

Where a suit is instituted against all defendants jointly and severally and one of the defendants dies and his legal representatives are not brought on record in time, the suit abates against all. The minority of plaintiffs is no bar against the running of limitation.

Revision against the order of the Commissioner of Ambala.

ORDER (24th February, 1927).

Rejected. There has been no mistake in jurisdiction.

ORDER (21st March, 1927).

Dr. Gokal Chand Naurang personally asked me for permission to argue this case again before me and he assured me that there really had been a defect in jurisdiction. I have, therefore, sent for all the files and have again carefully considered the matter.

The whole question turns on whether the suit can be held to have abated in accordance with O. 22, r. 6. It is to my mind quite clear that the hearing of this suit had not been completed before the trial court, when one of the defendants died and therefore O. 22, r. 6 clearly applies. The second point raised by Dr. Gokal Chand Naurang was that even after the suit abated it should have been held to have abated only with respect to the defendant who had actually died. He argued that the suit was not against the defendants jointly and severally. As to this point reference to the plaint clearly shows that it was intended to be against all defendants jointly and severally and, therefore, abatement cannot be held to be with respect to one defendant only but must affect all the defendants. Finally Dr. Gokal Chand Naurang argued that because some of the plaintiffs were minors, therefore, the period of limitation for abatement would not run until they had become of age. I do not agree with this. The suit was brought by the next friend of the minors and the next friend is responsible on behalf of the minors for the proper conduct of the suit.

I see no reason to review my order of the 24th February 1927.

Petition rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 77 of 1926-27 (Decided on 24-10-1927).

'King, F. C.

RAI FAIZ MOHAMMAD KHAN

*Appellant**Versus*

CROWN

Respondent.

Punjab Land Revenue Act, S. 13 (1)—Collector's order modified on appeal by the Commissioner—no appeal therefrom to Financial Commissioner.

No second appeal can lie, when the Collector's order has been modified by the Commissioner in appellant's favour. The only person who can prefer a second appeal to the Financial Commissioner is the person against whom the lower Appellate Court's order on appeal operates.

Appeal from the order of Commissioner, Jullundur Division.

ORDER.

This is not an appeal. It is really an application for revision of an order passed by the Commissioner in appeal to him. The Commissioner confirmed the finding of the Collector that water rate was due, but he reduced the amount of water rate to be paid. That is to say that both Commissioners are in agreement that water rate is due. On this point no appeal lies. Further the only modification made by the Commissioner is in favour of the petitioner. It is doubtful whether a further appeal lies against such an order. The petitioner as a result of his appeal to the Commissioner is better off in consequence of the Commissioner's order than he would have been if the Commissioner had simply confirmed the Collector's order. If the Collector's order had been confirmed no appeal would lie to the Financial Commissioner (proviso (i) to S. 13 of the Land Revenue Act.) It seems to follow *ex majori* that no appeal can lie when the Collector's order is modified in the appellant's favour. He cannot be in a better position to appeal when part of his appeal has been granted than he would be to appeal if the whole appeal had been refused. The person who can prefer a second appeal to the Financial Commissioner is the person against whom the lower Appellate Court's order on appeal operates. I treat the petition as an application for revision and I refuse to interfere.

CAPTAIN KABUL SINGH *v.* RISALDAR NUR KHAN 45
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 71 of 1926-27. (Decided on 20-10-1927).

King. F. C.

CAPTAIN KABUL SINGH BAHADUR

Appellant

Versus

RISALDAR NUR KHAN

Respondent.

Zaildar—appointment of—Collector's decision not to be upset except on special grounds—communal consideration—if proper.

When the Collector has chosen a man for the appointment of Zaildar, his decision should not be upset except on strong grounds. In cases of this kind it is inadvisable to take into consideration the communal question or rather to give the communal question undue weight.

Appeal from the order of the Commissioner of Multan Division.

ORDER.

This is a case in which there is no obvious reason for which the Deputy Commissioner's order should have been reversed. It is true that the qualifications of the candidates are equal, and that it is desirable to give some representation to the Mohammedans. All these matters were before the Deputy Commissioner when he reached his decision, and it is purely a matter of opinion whether the Deputy Commissioner was or was not right in choosing Captain Kabul Singh. It is, however, a well established principle of this Court that when the Collector has chosen a man for the appointment of Zaildar his decision should not be upset except on strong grounds. The Commissioner in his order has quoted the ruling of this Court in case No. 28 of 1922-23, *Nanak Singh v. Bhola Singh* (1), but that case is to be distinguished from the case now under consideration, because there were reasons which seemed plain why the Deputy Commissioner's order should be upset. I cannot find those or similar reasons in the present case.

I agree with the Deputy Commissioner in thinking that in a zail containing a large number of Military land-holders, it is advisable in making an appointment of this kind to choose the senior man, other things being equal. It is also, I think, inadvisable to take into consideration the communal question or rather to give the communal question undue weight.

The Commissioner was influenced by the fact that the Deputy Commissioner had been in the district for only 10 days when he passed his order. That, of course, is a material fact which can be taken into consideration if the Deputy Commissioner's order was manifestly wrong. I am, however, not convinced that his order was wrong.

It has been alleged that the respondent, Nur Khan, does not live in th

Zail and that most of his duties are preformed by his son who acts as his substitute. This has been denied in a somewhat half-hearted manner, but it is admitted that Nur Khan has frequently to go to Rawalpindi, where, he says, he has public duties to attend to. On the other hand, Captain Kabul Singh is resident in the Zail and during the time he was acting as Zaildar he appears to have done well.

After a full consideration of all the facts, I am of opinion that the circumstances were not such as to justify the Deputy Commissioner's order being upset. I accept the appeal, confirm the order of the Collector and cancel that of the Commissioner. Parties will bear their own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue

No, 22 of 1927-28. (Decided on 2-12-1927),

King F. C.

BUDHA SINGH and another

Applicants

Versus

SARUP SINGH and others

Other side

Punjab Tencancy Act, S. 84—Revision—mistake in the question of limitation—whether ground, for.

Held, that a mere mistake in the question of limitation cannot be held to be either an illegality or a material irregularity and that it would not justify interference on revision.

Revision from the order of Collector of Amritsar, forwarded by Commissioner of Lahore Division, with his opinion.

ORDER.

The Commissioner of Lahore has reported these three appeals to me, under the provisions of S. 84, sub-section (3) of the Tenancy Act, XVI of 1887, and has recommended that I should exercise the powers of revision which I have under sub-section (5) of the same section. Sub-section (5) lays down that the Financial Commissioner may interfere with any decree on any ground on which the High Court in the exercise of its revisional jurisdiction may under the law for the time being in force interfere with the decree of a Civil Court. The law under which the High Court may interfere in exercise of its powers of revision is laid down in S. 115 of the Civil Procedure Code, and this section corresponds with S. 622 of the old Code. The section lays down that the High Court may interfere on one of three grounds :—

(a) if a subordinate court has exercised a jurisdiction not vested

in it ;

- (b) if it has failed to exercise a jurisdiction vested in it, and
- (c) if it has acted in the exercise of its jurisdiction illegally or with material irregularity.

Now it is obvious that the first two grounds of interference do not exist in this case. There has been no refusal to exercise jurisdiction and no improper use of jurisdiction. It remains to determine whether it can be said that the lower Appellate Court and the Original Court can be said to have acted in the exercise of their jurisdiction illegally or with material irregularity. The leading case on the subject is the case of *Amar Hussain Khan v. Sheo Bakhsh Singh* (1). The decision there is given in the following words : "The question then is, did the judges of the Lower Courts in this case in the exercise of their jurisdiction, act illegally or with material irregularity? It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly they had jurisdiction to decide the case ; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity." This rule of law has been settled for many years and has itself led to numerous decisions on the question of what is or what is not a material irregularity. The decisions are sometimes conflicting. The weight of the decisions seems to be that "the section applies to jurisdiction alone, the irregular exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved." If this interpretation of the law is correct, and I believe that it is correct, then it does not seem to me that a mere mistake in the question of limitation can be held to be either an illegality or a material irregularity such as would justify the interference of a High Court under S. 115 of the Civil Procedure Code (and consequently my interference under S. 84 (5) of the Punjab Tenancy Act, XVI of 1887). For this reason, it is not necessary for me to discuss the nicely balanced arguments whether the suit falls under Article 2 of the Schedule of the Punjab Act. I of 1920. or under Article 120 or 144 of Act IX of 1908.

The application for revision is refused.

Application refused.

(1) 11 Cal. 6.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 19 of 1926-27. (Decided on 28-1-1927).

King, F. C.

RATTAN SINGH

*Appellant**Versus*

NARANJAN SINGH

Respondent.

Lambardar—appointment of—near relation dismissed for bad livelihood—is no bar to—opening of the history sheet in the police—serious disqualification.

Held, that the dismissal of a near relative for bad livelihood is in itself no bar to appointment as Lambardar. Held further, that, as a person whose conduct is so suspicious that it is necessary for the police to open his history sheet, would not ordinarily be retained as a Lambardar, it follows that such a person should not ordinarily be appointed a Lambardar.

Appeal against the order of the Commissioner of Jullundur Division.
ORDER.

In this case the Collector has passed over the claims of Naranjan Singh for two reasons (1) because he is nearly related to the Lambardar who has been dismissed for bad livelihood, and (2) because he has had his history sheet opened in Police Station Mamdot.

The Commissioner in dealing with the matter has decided quite rightly that the offence for which Jugraj Singh, the former Lambardar, was dismissed was not of such a nature as to "debar the appellant from his rights", and he has therefore appointed Naranjan Singh to be Lambardar in place of Jugraj Singh dismissed. The Commissioner has not in his order noticed the second point which is that Naranjan Singh himself has had his history sheet opened and may, therefore, reasonably be suspected to be of bad character. It seems to me that a person whose conduct is so suspicious that it is necessary for the Police to open his history sheet would not ordinarily be retained as a Lambardar and it follows that such a person should not ordinarily be appointed a Lambardar. It is possible, however, that the history sheet which has been opened is in some way defective and for this reason the Commissioner has not thought it right to accept it as a justification for overlooking the rights of Naranjan Singh. The matter should be clearly decided in the Commissioner's order.

I, therefore, accept this petition of appeal and I return the case to the Commissioner with the request that he will make a fresh decision after fully considering the fact that Naranjan Singh's history sheet has been opened. The costs of this appeal would follow the final result.

Appeal accepted.

KESAR SINGH v. MULK RAM 49
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 8 of 1927-28. (Decided on 26-11-1927).

King, F.C.

ASA SINGH

Versus

JAWALA SINGH

Revenue.

Applicant.

Respondent.

Lamberdar—Succession—hereditary claim—absence—no disqualification.

Held, that the dictum that a son has a preferential claim to a grandson is wrong. Held also, that the mere fact that a man is an absentee or a Lambardar elsewhere does not exclude him from succession.

Revision against the order of the Commissioner, Lahore Division.

ORDER. (14-10-27)

I think that the Commissioner's proviso that Asa Singh shall succeed Jawala Singh is *ultra vires*. The Collector's dictum that a son has a preferential claim to a grandson is of course wrong. The mere fact that a man is an absentee or a Lambardar elsewhere does not exclude him from succession. Let notice issue to both parties.

ORDER. (26-4-27)

My order of 14th October will be read as part of this order. The Commissioner's order directing that Asa Singh shall succeed Jawala Singh is certainly *ultra vires*. Once Jawala Singh is appointed Lambardar, the Lambardari is removed from the line of Shamla Singh, and the son of Jawala Singh must succeed his father if otherwise fit.

I have suggested a way out of the difficulty to which both parties have agreed before me. It is this. I appointed Asa Singh to be Lambardar in succession to Bachan Singh his grandfather as Samhala Singh, Asa Singh's father has relinquished his claim. Jawala Singh the uncle of Asa Singh is appointed *sarbrah* for Asa Singh on full *pachotra* and will hold that appointment for life (unless he is for any reason dismissed) To this extent I accept this appeal.

The parties will bear their own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

No. 52 of 1926-27. (Decided on 3-11-1927.)

King, F. C.

KESAR SINGH

Versus

MULK RAJ

Revenue.

Appellant

Respondent.

Lambardar—appointment of—Collector's choice to be maintained.

Held, that there is no reason why a man, simply because he is descended from the original Lambardar in the female line, should be chosen to be a Lambardar in preference to the man appointed by the Deputy Commssiioner and the Collector.

Appeal against the order of the Commissioner, Jullundur Division.

ORDER.

The Commissioner in his order has made an obvious mistake in taking into consideration the claims of relationship of Mulkraj. Mulkraj is descended from the original lambardar in the female line and, under the rule, quoted by the Commissioner in his order, only descendants in the male line must be taken into consideration. Excluding Mulkraj's claims of relationship there is no reason why he should be chosen to be a lambardar in preference to the man appointed by the Deputy Commissioner and Collector. I accept the appeal and following the well-established rule of this Court I decide that the Collector's choice should be maintained. I confirm the Collector's order appointing Kesar Singh to be lambardar.

Appeal accepted.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1928.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 13 of 1927-28. (Decided on 4-1-1928)

Miles Irving, F. C.

BAGH DIN

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Appellant.

Versus

KARAM DAD

...

Respondent.

Zaildar—Appointment by Collector to be upheld as far as possible.

Appointments made to the post of zaildar or sufedposh by Collector should, as far as possible, be upheld on appeal both because the local officer is presumed to have a better knowledge of the merits of the respective candidates and also because it is most undesirable to encourage appeals against orders in this class of cases.

Naib zaildar—application after appointed date—power of Collector to appoint.

A person who being properly qualified appears before the Collector and is admitted by him as a candidate may be appointed by him, even though such person has not applied within the date appointed.

Zaildari—appeal—party to bring whole case at first possible occasion—accusation of mal-practice against revenue authorities to be brought on record in form of a petition.

It is the duty of a party to a case to bring forward the whole of his case at the first possible occasion. A grave accusation of mal-practice on the part of the

revenue authorities responsible for the preparation of the case should be brought on the record in the form of a petition.

Appeal from the order of the Commissioner of Multan.

ORDER.

(4th January 1928).—Bagh Din was appointed Naib-Zaildar by the Collector of Montgomery, Karam Dad appealed and his appeal was accepted by the Commissioner of Multan. The principle regularly laid down by Financial Commissioner in dealing with Zaildari cases was last stated in the case of *Badlu Ram v. Dani Ram* (1), namely, that the appointments made to the post of Zaildar or Sufedposh by Collector should, as far as possible, be upheld on appeal, both because the local officer is presumed to have a better knowledge of the merits of the respective candidates for the appointment and also because it is most undesirable to encourage appeals against orders in this class of cases. In this case there is absolutely no ground for interference with the Collector's order as far as the respective merits of the candidates are concerned. Nor is this the chief ground on which the Commissioner has reversed the Collector's order. The principal ground taken by the Commissioner, and the only one which I shall consider, appears to be that there was sharp practice on behalf of the appellant Bagh Din in causing the case to be delayed until he was qualified to be a candidate by reason of being a Lambardar. The allegation made being that Bagh Din being a relative of the Revenue Assistant, Chaudhri Mohammad Ismail, was, at his instance, favoured by the Tahsildar at the expense of Karam Dad.

The facts are that the applications for the post were called for up to the 1st October, 1925. The date was later extended to 19th of October, 1925, by which time six applications had come in and two more came in before the 14th of December, 1925, when the Tahsildar ordered the statement to be checked. The case was subsequently constantly adjourned for lack of a particular statement required from Sadar till the 12th of July, 1926, when Bagh Din came into the case. Bagh Din was appointed Lambardar on the 18th of October, 1926, and the report was sent up on the 26th December, 1926.

I will first consider whether Bagh Din is disqualified by the mere fact that his application came after the date appointed. I find nothing in the rules or Standing Orders to guide me in this matter, but in practice these dates, which are fixed under the authority merely of the Tahsildar are not strictly observed. Often it happens that the Collector admits applications up to the date of his decision and the conclusion I arrive at is that a person

(1) Case No. 15 of 1926-1927.

who being properly qualified appears before the Collector and is admitted by him as a candidate may be appointed by him.

Now as regards the allegation of sharp practice, there is nothing to show that it took place more than the facts

- (a) that the case was delayed,
- (b) that it was in Bagh Din's interests that it should be delayed,

(c) that the Revenue Assistant's father owns land in Bagh Din's Chak, a fact which he frankly brought to light, and is also of his *biradari* which apparently only means that they both belong to the Ahmadiya persuasion. These are very unsafe grounds on which I base a conclusion that gravely affects the credit of a Gazetted Officer. The case was adjourned six times for want of a statement of area by tribes. It is a mere assumption that this was a mere blind due to the interference of the Revenue Assistant. Moreover had the case been kept waiting for Bagh Din it would have been natural to expect that it would have been sent up with the missing statement as soon as Bagh Din was eligible. But it was not sent up until two months after Bagh Din was eligible and then the statement was not ready. The facts are perfectly consistent with the theory that the case was one of those delays which are only too common and that Bagh Din took the opportunity of it to come in as soon as he found that he had a chance of being eligible. And finally no sharp practice was necessary. Bagh Din could have at any time said that his Lambardari case was pending and asked that the Naib-Zaildari be held up till it was settled, and he would have made a perfectly reasonable request. And in point of fact the Commissioner has not come to a definite finding that there was sharp practice committed. After relating the facts he goes on to discuss the relative merits of the candidates and finishes by saying in general terms that the circumstances of the case require that Karam Dad "should not be ousted" in favour of Bagh Din.

The view of the case which I take is that the relative merits of the two candidates may be ignored. Taken by themselves they clearly do not afford a ground for interference with the Collector's order in the light of the principles which I have above quoted. In order to enable me to uphold the Commissioner's order I should have to go beyond what he has found and find clearly that Bagh Din has disqualified himself by becoming a party to sharp practice. This I am not prepared to do on the record.

A further point is that the whole plea of sharp practice is an afterthought raised for the first time in the Appellate Court and not

so far as the record or judgment show brought up, as it should have been, before the Collector. It is the duty of a party to a case to bring forward the whole of his case at the first possible occasion, and in this case one has a right to expect that a grave accusation of *mal-practice* on the part of the revenue authorities responsible for the preparation of the case should be brought on the record in the form of a petition.

For all these reasons I am unable to agree that a case has been established for interference with the Collector's order. I accept the appeal and appoint Bagh Din.

Each party to bear its own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 10 of 1927-28. (Decided on 4-1-1928)

Miles Irving, F. C.

SOBHA RAM

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Appellant.

Versus

GIRDHARI LAL

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Respondent

Lambardar—Collector's choice—dismissal for being involved in debts—grandson gifted with land not a suitable choice.

The grandson of Lambardar dismissed on account of debts is not a suitable choice for the vacant post, merely because he has been gifted with land by his grandfather for the purpose.

Appeal from the order of the Commissioner of Jullundur.

ORDER.

Gobindmal Lambardar was dismissed on account of insolvency and in order to secure the Lambardari for his grandson gifted to him 57 *bighas* of land. The Collector refused to appoint Girdhari Lal partly because the land gifted had been attached, partly because he doubted whether its value was sufficient to secure the land revenue and partly on the general ground that it was unsuitable to appoint a bankrupt's grandson, when it is not certain whether he will be left in possession of what

little property he has. The Commissioner has reversed this decision merely with reference to the second ground finding that the value of the land is sufficient to cover the land revenue, but it is not enough to show this. Gobindamal, the dismissed Lambardar, held land sufficient to cover the land revenue, but he was dismissed because he was seriously embarrassed by debt. We demand more than that. We shall be able in the last resort to recover the land revenue by the difficult process of sale of land. Now, if Gobindamal was and apparently is embarrassed by debt, I do not see how we can regard that his minor grandson is not so embarrassed. He must share the fortune of his family. I, therefore, do not hold that the grandson of a Lambardar dismissed on account of debt becomes a suitable choice for the vacant post merely because he has been gifted with land by his grandfather for the purpose. I, therefore, reversing the Commissioner's decision and restoring that of the Collector, appoint Sobha Ram Lambardar. Parties will bear their own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 70 of 1926-27. (Decided on 5. 1.1928).

Miles Irving, F. C.

PARTAP SINGH

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.. Appellant.

Versus

MANGAL SINGH

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... Respondent.

Lambardar—Zaildari and Lambardari cases—party holding up a part of case for Appellate Court—not to be encouraged—Collector's choice—person having superior claim regarding matters in rule 15 of Land Revenue—selected by Collector—reversal by Commissioner—Collector's order to be restored.

M was not related to the deceased Lamabardar in the degree contemplated by Land Revenue Rule 17 (ii) (a); but belonged to biradri which constituted a claim to be considered. P.S. had claims superior to M as regards matters referred to in rule 15, viz., the extent of property, services rendered, personal influence. The Collector appointed P. S. but the Commissioner reversed that order and appointed M. Held, that the superiority of P. S. in all other points should be allowed to weigh against the hereditary claim of especially when P. S. is the Collector's choice and that the Commissioner's order should be reversed.

—Held further, that it is the duty of a party to a case to state the whole of his case at the first possible occasion. There is a regrettable tendency in zaildari and lambardari cases for applicants to hold up a part of their case for the Appellate Court and it should not be encouraged.

Appeal from the order of the Commissioner of Ambala.

ORDER.

There is a vacancy of *Lambardari* in the village of Nagla. This village is chiefly owned by Hindu Katgarh *Jats* but partly also by Siddhu *Jagirdars*. There were two Katgarh *Lambardars* out of whom one died and in his place the Collector appointed a representative of the *Jagirdars*. The Commissioner reversed his order on the following grounds:—

(a) beyond the family of *Jagirdars* there are no *Jat Sikhs* in the village:

(b) Partap Singh owns land only by purchase without a share in the *Shamilat*:

(c) a *Mahzar Nama* was presented to his Court objecting to the appointment of Partap Singh, and

(d) the other *Lambardari* is held by Hindu *Rajputs*. Of these I may at once dismiss the fourth, the other *Lambardar* is a Hindu *Jat*. As regards the third, I object on principle to the introduction of new matter in the appellate Court. It is the duty of a party to a case to state the whole of his case at the first possible occasion. There is a regrettable tendency in *Zaildari* and *Lambardari* cases for applicants to hold up a part of their case for the Appellate Court, and it should not be encouraged. As regards the second reason it is not the case that Partap Singh owns land only by purchase. It is true that in *Putti Baru*, where the *Lambardari* is vacant, he has only land acquired by purchase without a share in the *Shamilat*, but he holds 51 *bighas* outside both *pattis* described as ancestral land *az-sare deh*.

The respondent Mangal is not related to the deceased *Lambardar* in the degree contemplated by Land Revenue Rule 17 (ii) (a) but does belong to *biradri* and this, though not specifically mentioned in rule 15, does, in my opinion, constitute a claim to be considered among other matters. But with reference to the other matters referred to in rule 15, the extent of property, services rendered, and personal influence, the claims of Partap Singh are much superior. Partap Singh is a *Jagirdar* in the estate and this is an instance of a contest which frequently takes place between a worthy and efficient *Jagirdar* and an ordinary representative of the

proprietary body. If it was, as imagined by the Commissioner, the case that the appointment of Partap Singh would take away from the proprietary body their only *Lambardari*, I would rank membership of this body very high, but as it continues to possess one, I think it is in some ways advantageous that the *Jagirdars* should be represented, and having regard to the matters laid down in rule 15 it is, I think, fair to allow the superiority of Partap Singh in all other points to outweigh the faint hereditary claim of Mangal Singh especially when Partap Singh, is the Collector's choice. I, therefore, reversing the Commissioner's order, appoint Partap Singh. Each party to bear its own costs.

Order reversed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 18 of 1927-28. (Decided on 5-1-1928).

Miles Irving, F. C.

JODH SINGH

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... *Appellant*

Versus

CROWN

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... *Respondent.*

Fundamental Rule 56 (b)—ministerial servant of 55—duty of Deputy Commissioner's wishing to have such servant till 60—application by Deputy Commissioner for extension—order of refusal by Commissioner—void ab initio.

Under Fundamental Rule 56 (b), a ministerial servant who has reached the age of 55 may be retained up to the age of 60, or may be required to retire. If the Deputy Commissioner wishes to retain him till 60, he has to do nothing; but where a Deputy Commissioner applies quite unnecessarily for extension and the Commissioner refuses to give, the proceedings are void ab initio as they are based on a misconception.

Appeal from the order of the Deputy Commissioner, Jhelum.

ORDER.

S. Jodh Singh, Head Treasury Clerk, Jhelum is a ministerial servant who reached the age of 55 on 16th December, 1927. He comes under Fundamental Rule 56 (b), that is to say, he may be required to retire by the Commissioner (Delegation Rule 22-4-23-C in Subsidiary Rules) but should ordinarily be retained in service up to the age of 60 years.

This being so it was quite unnecessary for the Deputy Commissioner to apply for an extension. If the Deputy Commissioner wished to retain him he had only to do nothing and his service would have automatically gone on till he was 60.

The rule, however, was clearly misunderstood both by the Commissioner and the Deputy Commissioner. The Deputy Commissioner sent up a quite unnecessary application for extension which the Commissioner refused to give.

I feel that I must regard proceedings thus based on a misconception as void *ab initio*. It might be argued that I should take the Commissioner's refusal to give an extension as a requirement to retire. But that would not be quite fair. The refusal of what is exceptional, is not the same as the denial of something normal. It does not follow that if the Deputy Commissioner had said nothing about the case the Commissioner would have interfered *suo motu*.

I, therefore, feel bound to accept the appeal, not on the merits but on the matters of form.

The Deputy Commissioner will now, if he still wishes to retain S. Jodh Singh, fill up the certificate required by Chief Secretary's letter 1855 S. H.-Gaz., dated 1st July 1927. There is absolutely no reason why the Commissioner should not call on his Deputy Commissioner to send him copies of all such certificates or of certificates relating to any particular class of government servant, and *suo motu* requiring any such ministerial servant between the age of 55 and 60 to retire and in particular there is nothing in this order to prevent him requiring S. Jodh Singh to retire. But the order must take this form and not that of a refusal to grant an extension.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision side

Revenue

No. 17 of 1927-28. (Decided on 7-1-1928.)

Miles Irving, F. C.

NARAIN DAS

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... *Applicant.*

Versus

BHIMI RAM

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... *Otherside.*

—Zaildar—Negi of Kothi—not a Zaildar—succession governed by Land Revenue Rules 15 and 17.

The Negi of Kothi is not a Zaildar, but a Headman. There is no need for him to be Lambardar of the patti and the succession is governed by Land Revenue Rules 15 and 17 unless the Kopatti falls within certain jagirs.

Revision from the order of the Commissioner of Jullundur.

ORDER.

The Commissioner has rejected the appeal of Narain Das against the order of the Collector appointing Bhimi Ram as Negi. Narain Das applies for revision.

As Bhimi Ram is not a Lambardar I have to decide whether a Negi is a Zaildar ; as if a negi is a Zaildar, Bhimi Ram is not qualified. It appears from the Kulu Gazetteer page 145 that in the Settlement of 1913 the Kothi was made the estate for the purposes of Land Revenue Rules 14, and this has been embodied in Land Revenue Rule 14 (iv). The Negi of the *kothi* is, therefore, not a Zaildar, but a headman : there is no need for him to be Lambardar of the patti, and the succession is governed by Land Revenue Rules 15 and 17 unless the *kothi* falls within certain Jagirs which is not the case.

There is, therefore, nothing irregular in the appointment of Bhimi Ram.

I am not prepared to interfere in revision, on the merits, in the Collector's selection.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 47 of 1927-28. (Decided on 11-1-1928).

Craig, F. C.

MANGAL SINGH

Applicant

Versus

MILKHA SINGH and others

Respondents.

Punjab Land Revenue Act, S. 37—Mutation—order rejecting mutation—contrary order not to be passed within a few months.

When an order rejecting mutation is passed, it is not right that a contrary

order affecting the same parties and same land should be sanctioned, a few months later. If a party who has unsuccessfully applied for mutation is entitled to renew its application at intervals of a few months, there would be no finality about such proceedings.

—S. 37 (b)—Decree time-barred—whether binding.

Held, that a decree barred by time is not binding on the parties.

—S. 37—Mutation order bad—setting aside of.

Held, that a mutation order, if intrinsically bad, should be set aside, though it has formed the basis of an order which is not in accordance with the entry in the record of rights.

Case forwarded by the Commissioner of Lahore.

ORDER.

The facts of this case do not appear clearly from the orders either of the Naib-Tahsildar dated 14th of June, 1926, or of the Collector dated the 2nd of September, 1926, or in the reference from the Commissioner, dated the 29th of October, 1927. It is, therefore, desirable to recapitulate them briefly.

The original owners of the land in dispute were Jiwan and Khiwan, sons of Dewa Singh *Jat*. During their minority their mother sold the land in dispute to the predecessors-in-interest of the present respondents, to whom I will refer as the *Jat* vendees. This sale is alleged to have been effected on the 12th of March, 1890, but the exact date is immaterial as it is agreed that the sale took place before 1899.

Subsequently after Jiwan and Khiwan had attained their majority, they sold the same land by a registered deed, dated the 14th of June, 1899, to Atma Singh, etc., the predecessors-in-interest of the present applicant, to whom I will refer as the *Kamboh* vendees.

In 1901, a civil suit was instituted by the original *Jat* vendees against the vendor and the subsequent *Kamboh* vendees to obtain possession of the land. The suit was dismissed in the original Court, but on appeal the Divisional Judge granted a decree, dated the 1st of May, 1902, for possession of the land in favour of the original *Jat* vendees, on the ground that the sale was for necessity and for the benefit of the minor proprietors and was binding on them.

The case for the present applicant is that this decree was never executed and that the decree-holders never obtained possession of the land. This is denied by the respondents, the *Jat* vendees. They allege that they did obtain possession on the 13th of October, 1904, and

in proof of this assertion have produced a copy of a receipt filed in the Civil Court by their predecessor-in-interest (Isher Singh), stating that he had obtained possession. It is alleged by counsel for respondents that the land was at that time uncultivated and situated in a joint holding in the proprietorship of a number of *Jat* owners.

I do not consider that this receipt is sufficient proof that possession was ever obtained by the original *Jat* vendees in pursuance of the decree of the 1st of May, 1902. In my opinion this receipt was merely an attempt to evade the consequences of the Law of Limitation. It was, in fact, admitted by both parties in the partition proceedings recently decided, that the decree of May, 1902, had not been executed and that the original *Jat* vendees had never obtained possession. I hold accordingly that the decree of the 1st of May, 1902, is barred by time and is inoperative and that it is not a "decree binding on the parties" within the meaning of S. 37 (b) of Act XVII of 1887.

Apparently, sometime in 1923, the original *Jat* vendees initiated partition proceedings on the basis of the decree of 1902. In the course of these partition proceedings, both parties, as already stated, admitted that the decree had never been executed. By an order, dated the 24th of November, 1925, in Mutation No. 1011, the Revenue Officer rejected an application that an entry should be made, showing possession in favour of the original *Jat* vendees, on the ground that no effect had been given to the decree of 1902 and that possession had not, in fact, passed to the original *Jat* vendees. This order of the 24th of November, 1925, was appealable, but no appeal appears to have been made.

Later on in the course of the partition proceedings, the Revenue Assistant directed the *Patwari* to put up a fresh mutation report for orders. The *Patwari's* report was to the effect that the *Kamboh* vendees were in possession and that mutation in favour of the other side had already been rejected. It appears that, before the Revenue Officer, both parties admitted the existence of the decree of 1902, but agreed that no execution proceedings had been taken, and that possession had never passed to the decree-holders. Nevertheless, the Revenue Assistant by an order, dated the 27th of May, 1926, directed that an entry should be made in the *Jamabandi* "in accordance with the decree of 1902." He held that the *Kamboh* vendees, if still in possession of the land, should prove their title to it in a Civil Court. The Naib-Tahsildar, Sharam Singh, by order, dated the 14th of June, 1926, gave effect to this decision of the Revenue Assistant.

An appeal was made to the Collector against the Naib-Tahsildar's order of the 14th of June, 1926, but was rejected by the Collector's

order. dated the 2nd of September, 1926. The Collector held that the Revenue Assistant's order of the 27th of May, 1926, was fair. The Commissioner by his order of the 29th of October, 1927, has referred the case to me with a recommendation that the order of the mutation of the 14th June, 1926, should be set aside.

There are two grounds on which I consider that the order of the 14th June, 1926, cannot be allowed to stand. In the first place, the Civil Court's decree of the 1st of May, 1902, on which it is based, is admittedly time-barred and is, therefore, as explained above, not binding on the parties within the meaning of Section 37 (b) of Act XVII of 1887. In the second place, an order, rejecting mutation, having been passed on the 24th of November, 1925, it was not right that a contrary order, affecting the same parties and the same land, should be sanctioned a few months later. If a party, who has unsuccessfully applied for mutation, is entitled to renew its application at intervals of a few months, there would be no finality about such proceedings.

Counsel for the original *Jat* vendees has stated, in the course of his arguments, that, during the course of the partition proceedings, an order, was passed on the 25th of September, 1923, by the Revenue Assistant, directing the *Kamboh* vendees, who objected to partition, to prove their title to the land in a Civil Court; but no steps were taken by the *Kamboh* vendees in pursuance of this direction. Counsel has also stated that, on the 8th of June, 1927, an order was passed in the partition proceedings, granting the *Jat* vendees a share in the land, and has argued that, if I set aside the mutation order of the 14th of June, 1926, an anomalous situation will be created, there being two conflicting orders of Revenue Officers: (a) an order in the partition proceedings in favour of the *Jat* vendees, and (b) an entry in the record of rights in favour of the *Kamboh* vendees.

I admit that an anomalous situation will arise. But the order in the partition proceedings in favour of the *Jat* vendees is the direct consequence of the mutation order of the 14th June, 1926, which it is now sought to (be) set aside, and I cannot admit the proposition that a mutation order, if intrinsically bad, should not be set aside merely because it has formed the basis of an order which will not be in accordance with the entry in the record of rights.

For the reasons above stated I accept the revision, set aside the order of the Naib-Tahsildar, dated the 14th June, 1926, which sanctioned the removal of the names of the *Kamboh* vendees from the record of rights as proprietors of the land in dispute and substituted the names of the *Jat*

vendees, and direct that the entry existing in the record of the rights before the 14th of June, 1926, should be restored. Respondents to bear the costs throughout. Costs in this Court Rs. 16.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 29 of 1927-28. (Decided on 11-1-1928.).

Craik, F.C.

SATTAR and another

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... Applicants

Versus

Mst. JAWAI

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.. Respondent.

Punjab Land Revenue Act, S. 36—Revenue Officer not competent to substitute another order after several years.

It would be a most dangerous doctrine to admit that several years after a mutation order has been passed, it is open to a Revenue Officer to substitute for it another and completely different order merely on the ground that the original order was mistaken. 13 L. L. T. 81 ref., 4 P. R. 1912 (Rev.) dist.

Case forwarded by the Commissioner of Lahore.

ORDER.

This case has been referred to me by the Commissioner of the Lahore Division under Section 16, sub-section (3) of Act XVII of 1887.

The facts are briefly as follows:—

Nur Ahmad, the father of the two applicants, died in 1918 and an order, sanctioning mutation in favour of two applicants, his two only surviving sons, was passed on the 3rd of November, 1919. It should be noticed that the *patwari's* report, on which this order was based, stated that the deceased had left two sons and a widow of another son who had predeceased his father; but the order made no reference to the widow.

In 1926 the widow applied for the entry of her name in the Record of Rights as the proprietor of a one-third share of the property left by Nur Ahmad, on the ground that her name had been omitted from the mutation of 1919 by mistake. The Tahsildar's order of the 24th of December, 1926

sanctioned mutation of a one-third share in favour of the widow. The order contained the following sentence :—

“Sattar and Shahab taslim karte hain keh Mussammat Jowai apne mutwaffi shohar Jalal ke haq men baithi hui hai.”

The two applicants appealed to the Collector against the Tahsildar's order, but their appeal was dismissed by the Collector's order of the 11th of February, 1927.

In referring the case for revision, the Commissioner has cited the decision, dated the 15th of December, 1924, of my predecessor, Mr. King, in *Ohhittar v. Are Halmali*, (1). In that case Mr. King remarked, “No question of correction can arise in a case like this, where one party objects strongly to the new entry. If there has, in fact, been a mistake made owing to the mutation order, and, if that mistake has been incorporated in the revenue records, the only way to correct the mistake is by way of a regular suit. Proceedings such as those now under revision are entirely irregular.”

I am of opinion that similar considerations apply to the present case, and that the Tahsildar was not justified in passing his order of 24th of December, 1926, modifying the original orders of the 3rd of November, 1919, as no new fact has been proved or admitted, as required by Section 37 (a) of the Punjab Land Revenue Act. The sentence from the *Patwari's* report, which I have quoted above, merely amounts to an admission on behalf of the two applicants that Mussammat Jowai had not re-married. It cannot be taken as equivalent to an admission that she is entitled to the share of her deceased husband. Apart from this, the order of the 3rd of November 1919, whether right or wrong, was appealable and no appeal was made. Consequently, that order became final, so far as the courts of Revenue Officers are concerned, though the respondent had her remedy in a civil court. It would be a most dangerous doctrine to admit that several years after a mutation order has been passed, it is open to a Revenue Officer to substitute for it another and completely different order, merely on the ground that the original order was mistaken. To allow this to be done, would open a very wide door to corrupt practices on the part of the subordinate revenue officials. The present case is clearly distinguishable from that discussed in *Taja v. Karam Ali* (2).

Counsel for respondent has referred me to Section 16, sub-section (4), of Act XVII of 1887, and has pointed out that, if I am satisfied that the order of 24th December, 1926 is substantially just, I have entire discretion to

(1) Revision No. 204 of 1923-24

(2) 4 P. R. 1918 (Rev.)

allow it to stand, even if I consider that it is based on an erroneous view of the law. He urges that the respondent is a poor widow with a daughter to support, that she is entirely dependent on the land now in dispute, and has no sufficient means to enable her to institute a civil suit in regard to it. I am not, however, impressed by this argument, which is practically an appeal to my pity. When questioned by me, both the applicants stated that they were willing to give the respondent reasonable maintenance out of the property and were, in fact, doing so. The respondent, on the other hand, stated emphatically that she did not desire maintenance, but to establish her proprietary right in the land.

Another argument put forward by counsel for the respondent was that the Tahsildar's order of the 24th December, 1926 was merely one, reviewing the order of his predecessor under Section 15 (i) of the Act. It is sufficient answer to this argument to point out that the Tahsildar had not obtained the previous sanction of the Collector as required by proviso (a) to that section.

For the reasons stated above I accept the revision, and set aside the mutation order passed by the Tahsildar, Rai Sahib Lala Mathra Das, on the 24th of December, 1926, and direct that the entry in the Record of Rights, existing before that date, should be restored. The respondent must bear the costs throughout. Costs in this court will be Rs. 16.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 17 of 1927-28. (Decided on 13-1-1928.)

Miles Irving, F. C.

MANGAT RAI

Applicant

Versus

NAND KISHORE

Respondent.

Punjab Land Revenue Act, S. 16—Revision—decision as to limitation—not one about jurisdiction—not subject for interference in revision.

A decision as to limitation is one not about jurisdiction but made in the exercise of jurisdiction and is, therefore, not subject for interference in revision.

Document—insufficiently stamped—rejection in toto—irregularity.

When a document is insufficiently stamped, it is properly presented to the

extent to which it is stamped and, if the Court finds that it is altogether improperly presented and, consequently, rejects *in toto* on account of the period of limitation having elapsed, that Court irregularly refuses jurisdiction.

Revision from the order of the Commissioner of Ambala.

ORDER.

The Collector of Ambala has dismissed an appeal against an order, passing a decree in favour of plaintiffs, on the ground that the defendant-appellant had not properly stamped his appeal, which, having, therefore, not been properly presented within the period of limitation, had become time-barred. I am asked to exercise my revisional powers.

The first question I have to decide is whether the Collector's action assuming it to be wrong amounted to an irregularity in the matter of jurisdiction.

It is urged before me that any decision which a Court takes as to whether it will or will not hear a case on the merits is a decision as to whether it will or will not exercise jurisdiction. If an original Court finds that a case before it is time-barred, it refuses jurisdiction: if an appellate Court finds an appeal before it time-barred, it also refuses jurisdiction. I cannot, however, accept this. It is for every person who comes before a court to prove that his case is within limitation, and the question of limitation is simply one out of the various issues in the case. A decision as to limitation is one not about jurisdiction but made in the exercise of jurisdiction and is, therefore, not a subject for interference in revision. It is, therefore, necessary to go further into the case. A decision, whether a document is or is not properly stamped, is, I consider, not a decision as to jurisdiction. It is a decision taken in the exercise of jurisdiction. But the consequences of that decision may involve a question of jurisdiction. When a document is insufficiently stamped, it is properly presented to the extent to which it is stamped, and, if the Court finds that it is altogether improperly presented and, consequently, rejects it *in toto* on account of the period of limitation having elapsed, that Court irregularly refuses jurisdiction.

This is what has happened in this case. The trial Court found that the appeal contained a claim for a set off, for which set off the proper stamp was not affixed. It is urged before me (a) that there was no claim for a set off, but for a payment on the same account, and (b) that there was no counter-claim for a decree. Both of these are points to which the trial Court has not sufficiently applied its mind; but, apart from this and assuming that the appeal required to be stamped for the set off, the trial Court should have admitted it for what it was stamped for, that is, ignoring

the claim for the set off. In failing to do so, the trial Court refused jurisdiction, and I, consequently, have a case for the exercise of my revisional powers. In using these powers I go beyond merely rectifying the irregularity in which case I should leave it decided (a) that the claim made was for a set off, and (b) that it was made in such circumstances that made a stamp requisite on the amount of the set off, in spite of the fact that the defendant did not ask for a decree. Both of these appear to be disputable matters on which the trial Court has not fully applied its mind: and as the case has fallen within my power of revision, I consider that justice demands that the order referring the case back should leave the Appellate Court unfettered. It will, therefore, be within the power of the Appellate Court to find (a) that the claim is not a claim for a set off or (b) that it is a claim for set off in circumstances which do not require a stamp, in which case it will admit the appeal in full, (c) that a set off is claimed on which a stamp is requisite in which case it will either, in the exercise of its power under S. 28 of the Court Fees Act, give time for the stamp to be made good, or will admit the appeal ignoring the claim to the set off.

I, therefore, remand the case for fresh decision in the above terms.

Each party to pay its own costs.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 50 of 1927-28. (Decided on 14-1-28).

Miles Irving and Craik, F. Cs.

BHARAT SINGH

Applicant

Versus

CROWN

Respondent.

Patwari—dismissal for inefficiency—Financial Commissioner not to interfere—no right of appeal.

When a Patwari candidate has been struck off for reasons of inefficiency, the Financial Commissioner should not exercise revisional authority. A Patwari candidate is not a Government servant, and it is stretching a point to give him an appeal at all.

Practice—Collector passing orders—to write a self-contained order

The practice of the Collector's writing neither a self-contained order nor giving a copy of the report is an inconvenient one. It gives unnecessary trouble to appellate and revisional authorities, and it is not fair to the person affected who is not informed of the reasons for the order passed against him.

Revision from the order of the Commissioner of Ambala Division.

ORDER.

Mr. Miles Irving, F. C.—The Financial Commissioner is asked to interfere in revision with the order of the Commissioner confirming the Collector's order removing the name of a Patwari candidate. Unnecessary trouble has been given by the fact that the Collector neither wrote a self-contained order nor gave a copy of the report with which he agreed. This is an inconvenient practice. It gives unnecessary trouble to appellate and revisional authorities who have to send for the files to find out the reason of the order; and it is not fair to the person affected who is not informed of the reasons for the order passed against him.

It appears that the reasons for removing Bharat Singh's name were—

- (a) that he had not passed the 6th class examination, though given 6 months to do so on 31st October 1926;
- (b) that he was inefficient;
- (c) that he was addicted to absence without leave.

The Financial Commissioners do not think that the matter of retaining the name of a patwari candidate when struck off for reasons of inefficiency is one in which they should exercise their revisional authority. I am disposed to think that we ought to draw a line in the exercise of our revisional authority. A patwari candidate is not a Government servant and it is stretching a point to give him an appeal at all. But having had one and that being rejected by the Commissioner I do not think that the Financial Commissioners should interfere when inefficiency is one of the grounds. If the only ground was that he had not passed an examination the Financial Commissioners might interfere to relax their own rule.

Does F. C. D. concur in my draft order?

Mr. H. D. Craik, F. C. D.—Entirely.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 48 of 1927-28. (Decided on 18-1-1928).

Townsend, F. C.

UJJAGAR SINGH and others

Applicants

Versus

HUSSAINA and others

Other side.

Punjab Tenancy Act, S. 84—Mere omission to mention specific provision of law—if justifies revision.

Where the Collector fully considered a specific provision of law, but did not specifically mention it, in his judgment, held, that that was no irregularity which would justify interference in revision by the Financial Commissioner. 16 P. R. 1892 (Rev.) dist.

Case forwarded by the Commissioner of Lahore for orders of the Financial Commissioner.

ORDER.

These five cases have been forwarded to me by the Commissioner, Lahore, with a recommendation that, under the revisional powers vested in me by Section 84 (5) of the Punjab Tenancy Act, I should reverse the orders of the Collector of Lahore, dated 25th July 1927, upholding on appeal the orders of the Assistant Collector of Lahore, dated 8th March, 1927, dismissing the suit of plaintiffs, now applicants for revision. The reasons which led the Commissioner to make this recommendation are given in his reference to me, dated 13th February, 1928.

I have heard counsel to-day for the applicants.

The revisional powers possessed by the Financial Commissioner under the Tenancy Act are smaller than those he possesses under the Land Revenue Act : in cases under the former Act, as those now in question, he can only interfere, as was held by my predecessor in *Budha Singh and others v. Sarup Singh and others* (1) on 2nd December, 1927 (now referred to by Commissioner, Lahore), if the Courts below :

- (i) have exercised a jurisdiction not vested in them : or
- (ii) have failed to exercise a jurisdiction vested in them : or
- (iii) have acted, in the exercise of their jurisdiction, illegally or with material irregularity.

(1) 1928 7 L. L. T. 1.

In the present cases interference by me is only justifiable on the ground that the Collector acted with "material irregularity".

The other grounds on which interference is legal cannot apply; nor does counsel for petitioners contend that they do.

I cannot agree with the Commissioner that the Collector acted with material irregularity in these cases. *Azimullah and another v. Jehangir Khan and another* (2) which Commissioner refers to, is distinguishable. Counsel contends before me that the Collector showed material irregularity in not taking into consideration the provisions of Section 111 of the Tenancy Act. But a careful perusal of his judgment leaves no doubt in my mind that though he did not in it specifically mention that section, he did most fully consider it.

In these circumstances, I fail to see any ground for interference in the Collector's order, and reject the applications for revision. Reference to be returned accordingly to Commissioner, Lahore. I make no orders as to costs in my Court.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 71 of 1927-28 (Decided on 26-1-1928).

Miles Irving, F. C.

HARDITTA and others.....Appellants

Versus

SARDAR GAJJAN SINGH.....Respondent.

Punjab Tenancy Act, S. 38—practice—suit for rent of land—place of trial.

Held, that a suit for rent of land should be tried at the place where the land is situated, especially when the lease was executed and two at least of the defendants lived at such place.

Application for the transfer of the case from Ludhiana District to the Lyallpur District.

ORDER.

This is a suit for rent of land in Lyallpur, where the cause of action arises as not only is the land situated there but the lease was executed (2) 16 P. R. 1892 (Rev.)

KHAN MOHAMMAD KHAN & GHULAM MOHAMMAD KHAN. 21

there. Two at least of the defendants live at Lyallpur and the case could not be heard at Ludhiana without their consent unless the Court gave permission.

I think that in these circumstances it would not be wise to give the permission, and that justice can be most speedily and best done by a trial in Lyallpur. I accordingly order the transfer of the case to the Court of the Revenue Assistant, Lyallpur.

I desire to say that I attach absolutely no weight to the aspersions on the Revenue Assistant Ludhiana which ought not to have been made.

**IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.**

Appellate.

No. 67 of 1927-28, (Decided on 20-11-1928.)

Revenue.

Craik, F. C.

BAHAWAL

Appellant

Versus

JHANDA

Respondent.

Dismissal—contradictory and false statements—dismissal, if proper.

Where a lambardar makes two contradictory statements, one before the head constable and another before the Magistrate and one of the statements must have been a lie, held, that he should be dismissed. (*Craik, F. C.*) Bahawal v. Jhanda 1929 L. L. T. 1.

Appeal from the order of the Commissioner of Multan Division.

ORDER

I have now sent for the actual statements made by the appellant Jhanda (a) to the Head Constable in the course of investigation, and (b) in the Magistrate's Court. To the Head Constable Jhanda stated quite definitely that the 'chhavi' was recovered in his presence, but in court he denied that the 'chhavi' blade was recovered in his presence. The discrepancy is obvious and important, and I have no doubt that in one or other of the two statements Jhanda was lying. In my opinion, therefore, he was rightly dismissed from the office of Lambardar.

I accordingly accept the appeal, and direct that Bahawal, who was selected by the Collector in his order of the 11th June, 1928, to succeed Jhanda, be appointed Lambardar. The costs of this appeal, if any, will be borne by Jhanda.

Appeal accepted.

**IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.**

Appellate.

No. 22 of 1927-28. (Decided on 20. 1. 1928.)

Revenue.

Miles Irving, F. C.

KHAN MOHAMMAD KHAN

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Appellant

Versus

GHULAM MOHAMMAD KHAN

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Respondent.

Punjab Land Revenue Act—Land Revenue Rule 21 (iv) —

Distribution of shares of lambardari—Commissioner's confirmation not obtained—effect of.

Held, that the distribution of shares of Lambardari between various Lambardars, where the Commissioner's confirmation is not obtained treating the distribution as a local arrangement, is in effect an order passed under Land Revenue Rule 21 (iv) and that such an order is ultra vires and invalid.

Appeal against the order of the Commissioner, Multan Division.

ORDER.

This case has been complicated and unnecessary issues raised by the fact that the Collector in the same order in which he filled up the vacant office of Lambardar re-distributed the shares between the various Lambardars of the village. The deceased Lambardar was Lambardar of $\frac{1}{2}$ of the village, and the Collector in appointing Jalal Khan successor made him Lambardar of one quarter only and gave the other quarter to Khan Mohammad who was Lambardar of one-quarter formerly. Now the Commissioner has accepted the appeal of another claimant Ghulam Mohammad and Khan Mohammad appeals that his one-half be restored.

The Collector in his order admits that the distribution of the shares between Lambardars has been purely a local arrangement and that no orders under rule 21 (iv) of the Land Revenue Rules have ever been passed. He notes that no order under that Rule can be passed without the Commissioner's confirmation, but does not seem to realise that his order is in effect an order under that Rule. I, therefore, find that so much of the Collector's order as refers to the shares of the Lambardari is *ultra vires* and invalid. Therefore, Khan Mohammad's appeal falls to the ground. Even if I were to stretch a point and regard it as an appeal claiming the succession it would not avail him as the Collector has rightly found that he should not succeed and his hereditary claims are inferior.

I do not consider it necessary to summon appellant.

There is nothing in this order to prevent appellant or any one else applying for an order under L. R. R. 21 (iv).

Appeal rejected.

**IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.**

Appellate.

Revenue.

No. 2 of 1927-28. (Decided on 24-1-1928.)

Craig, F. C.

SADHU SINGH

Appellant

... Versu ...

DIXAL SINGH

Respondent.

Lambardar—appointment of—gift to person by brother to keep lambardari in family—gift likely to be challenged by reversioners—no ground for not appointing.

Where a gift of land is made in favour of a person in order to keep the lambardari in the family, the mere fact that the gift is likely to be challenged by reversioners is no ground for not appointing such person as Lambardar, for, if the gift is challenged, and in consequence thereof such person's property falls below the necessary value, then he can be dismissed from the Lambardari.

Appeal from the order of the Commissioner of Multan Division

ORDER.

The facts appear sufficiently from the Commissioner's orders of the 27th August, 1927 and 19th September, 1927. On behalf of the appellant *Chaudhri Abdul Ghani* has repeated the argument advanced in the lower Appellate Court that the appeal is time-barred. On this point I agree with the Commissioner that the Collector's order of the 11th of April, 1926, was in no sense a final order, and that the order appealed against was that of the 13th of January, 1927. The appeal is, therefore, within time.

Chaudhri Abdul Ghani has also argued that the respondent *Diyal Singh* may be assumed to have known of the proposed appointment of the appellant *Sadhu Singh*, as *Lambardar*, because notice to this effect was served on *Diyal Singh's* elder brother, *Inder Singh*. This assumption is not, however, necessarily correct, as *Inder Singh* and *Sadhu Singh* may have been in collusion.

The main argument, however, put forward on behalf of the appellant is that *Diyal Singh* has not sufficient property to qualify him for the post of *Lambardar*. Counsel argues that the gift of 3 *killas* by the eldest brother, *Dhana Singh*, is not valid, as *Dhana Singh* has been found to be of weak intellect. *Dhana Singh*, however, was certified by a medical man to be able to distinguish between his advantage and disadvantage. Counsel further argues that the youngest brother of the four, *Sundar Singh*, who is stated to be a minor, can challenge both gifts of 3 *killas* on the ground that they prejudicially affected his reversionary rights in the estates of his brother. I doubt if there is any substance in this contention as the gifts were made in order to keep the Lambardari in the family. I notice that *Sunder Singh* was present before the Revenue Officer when the mutations regarding the gifts were sanctioned, but no mutation was entered regarding *Sundar Singh's* share as the Revenue Officer was doubtful whether he was a minor or not, in any case, the validity of the gifts has not yet been challenged, and it must be taken that *Diyal Singh* at present holds 9 *killas* in proprietary rights. As the Commissioner has

remarked, there can be no question that the value of this land is sufficient security for the Government demand for a single harvest. If hereafter the gifts are challenged and set aside, and if in consequence thereof Diyal Singh's property falls below the necessary value he can be dismissed from the Lambardari.

For these reasons I reject the appeal, and maintain the Commissioner's order of the 19th of September 1927 appointing Diyal Singh to the post of Lambardar. Appellant will bear the costs of this appeal. Pleader's fee Rs. 16.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 8 of 1928-29. (Decided on 4-3-1928).

Craik, F. G.

LAHNA and others

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.. Applicants

Versus

GROWN

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.. Respondent.

Punjab Land Revenue Act. S. 16—all points not discussed by the Appellate Court—Financial Commissioner can interfere.

Where the Appellate Court did not discuss all the points urged before it, the order of the Appellate Court was interfered with on revision.

Punjab Colonisation of Lands Act, S. 20(e)—nomination of successors,

Where the original tenant had not acquired occupancy rights and the claimants had failed to establish their relationship to the original owner, held that they could not be nominated as successors under S. 20 (e) of the Act.

Revision from the order of the Commissioner of Multan Division.

ORDER. (8th November 1929).

It appears from the Collector's order of the 4th of February, 1928, that Shahabul was an original tenant who had not acquired occupancy rights. He died without leaving a widow or issue, and without nominating any person by registered deed, as contemplated in S. 20 (d) of Act V of 1912. Certain persons appeared before the Collector

claiming to succeed as Shahabal's agnates, but the Collector held that they had not proved their relationship to the deceased and refused to nominate any of them under S. 20 (e) of the Act. He held that the grant was escheated to Government. On appeal to the Commissioner this order was upheld.

I am now asked to revise the Commissioner's order on the grounds that the petitioners are proved by the '*shajrah-a-nasab*' of Chak No. 130 in the Chiniot Tahsil to be collaterals of the deceased. It is also urged that the deceased, Shahabal, had, in fact, acquired occupancy rights. Both these points were urged in the appeal to the Commissioner, but the latter's order of the 9th of August, 1928, did not discuss them. In the circumstances, I feel bound to remand the case to the Commissioner for further enquiry into these two allegations.

ORDER. (4th March. 1929).

I have now received the report of the Deputy Commissioner, dated the 31st of January, 1929, forwarded under cover of the Commissioner's letter No. 226 of the 18th of February, 1929.

It is clear from the Deputy Commissioner's report that Shahabal, the original tenant, had not acquired occupancy rights. It is also clear, in my opinion, that the petitioners have failed to prove by any reliable documentary evidence that they are descended from the ancestor from whom it is alleged that Shahabal was descended. In other words, they have failed to prove their relationship to the deceased. In these circumstances the Collector was right in refusing to nominate any of them under S. 20 (e) of Act V of 1912.

The application for revision is accordingly rejected.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 11 of 1927-28. (Decided on 16-3-1928).

Townsend. F. C.

RULIA SINGH

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Appellant

Versus

DHARAM SINGH

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Respondent.

Lambardar—Succession to a dismissed Lambardar—Appointment of—dismissal for embezzling land revenue—eligibility of relatives affected—Land Revenue Rule 17(2) proviso(b).

Where a Lambardar has been dismissed for embezzling a large sum of land revenue, it would be wrong to appoint any of his relatives to succeed him as Lambardar, as their eligibility is affected by his offence.

— Appeal from the order of Commissioner, Jullundur Division.

ORDER.

Rur Singh, Lambardar of Ghall Kalan, Tahsil Moga, District Ferozepore, was dismissed for embezzling a large sum of land revenue. The Collector appointed as his successor one Rulia Singh, who was no relation to the dismissed man. On appeal the Commissioner, while admitting that Rulia Singh was on his merits probably the best of all the candidates, held, that under Land Revenue Rule 17(2) the appointment must go to Dharam Singh, a first cousin of Rur Singh. Against that order Rulia Singh has appealed to me, and I have to-day heard counsel for both parties. I consider that the Commissioner overlooked proviso (b) to the Land Revenue Rule, on which he relied. The relevant portion of that proviso runs as follows:—

“Where a Headman has been dismissed for a serious offence or disqualification, the Collector may refuse to appoint any of his heirs whose eligibility is affected by such offence or disqualification.”

I regard the offence for which Rur Singh was dismissed as so serious that it would be wrong to appoint any of his relatives to succeed him as Lambardar, as I consider that their eligibility is affected by his offence. I am fortified in my view by the fact that it has been held by Financial Commissioners in the past that serious offences under the Excise Act of which Lambardars are found guilty entirely debar their heirs from appointment as Lambardars. Headmen of villages are appointed primarily for the collection of land revenue, and it is difficult to imagine any graver offence that can be committed by a Lambardar as such than the embezzlement of land revenue. I, therefore, set aside the Commissioner's order, and, accepting the appeal, restore the order of the Collector appointing Rulia Singh, Lambardar. Parties will bear their own costs.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision side.

Revenue.

No. 46 of 1927-28. (Decided on 7-4-1928).

Townsend, F. C.

MANGAL SINGH

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*Applicant**Versus*

THAKAR SINGH and others

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Respondents.

Limitation Act, S. 14.—Childless widow selling rights of occupancy—suit against vendee after widow's death—limitation—suit filed in Civil Courts within limitation—filed in Revenue Court after limitation—suit to be considered to be within time,

A suit by a landlord against a vendee from a childless widow of her occupancy rights for possession must be brought within 12 years of the widow's death. Where the landlord filed such a suit in a Civil Court within the period of limitation, but the plaint was returned for presentation to Revenue Court and was presented in the latter Court after the period of limitation, held, that the suit must be regarded as having been filed within limitation.

Case forwarded by the Commissioner of Jullundur,

ORDER

The facts are given in the judgments of the lower Courts and in the note of the Commissioner, dated the 30th of January 1928, with which he forwarded the papers to me to exercise my powers on the revisional side. The Commissioner asks me to send back the case for decision as to whether the plaintiffs have ever had, by their action, shown acquiescence in the sale of her occupancy rights by Mst. Rami to Mangal Singh defendant No. 1. I think, however, that the Commissioner has missed the point. Had Mst. Rami been still alive, action would certainly have to be taken in accordance with his recommendations, but she died childless on 12th April 1914. The rights of widows in land held by them as occupancy tenants are clearly defined in S. 59 (1) (b) of the Punjab Tenancy Act and they are strictly limited. As has already been said Mst. Rami left no child. Apparently there is no male lineal descendant in the male line of descent to whom the occupancy rights should go, and they, therefore, cease to exist. This point is not, however, material to the present issue. It is a principle of law that no person can give a better title than he has and the title given by Mst. Rami to Mangal Singh in 1899 could be no greater than her own title to the land:

so I hold that Mangal Singh ceased to be occupancy tenant from the date of Mst. Rami's death on the 12th of April 1914. In the present case the landlords wish to eject Mangal Singh from the land in question, saying he is a trespasser and has been so since Mst. Rami's death. Limitation for such cases which have to be heard by Revenue Courts, is admittedly 12 years. As has already been said Mst. Rami died on April 12, 1914, so limitation would expire on 12th April 1926. On 26th June 1925, the landlords brought a suit for possession in a Civil Court. The plaint was returned to them and they were told to bring it in a Revenue Court; they did so on 6th August 1926, *i.e.* they brought the case to the Civil Court within limitation and brought it in a Revenue Court outside limitation. I consider that the Collector's finding that the case should be regarded as within limitation from a Revenue Court point of view is correct, in view of the fact that the case was originally brought in a civil Court within limitation. It is unreasonable to expect peasants and even lawyers in outlying parts of the province to know exactly what cases should be brought in Civil Courts and what in Revenue Courts. I, therefore, consider that the finding arrived at by the Assistant Collector, Fazilka, which was confirmed by the Collector on appeal, is correct, and I decline to exercise my revisional powers in the case, as recommended by the Commissioner. No order as to costs. Parties can pay their own.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision side.

Revenue.

No. 161 of 1927-28. (Decided on 28-5-1928.)

Miles Irving, F. C.

KHARAK SINGH

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*Applicant**Versus*

BULANDA

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Respondent.

Land Revenue Rules—Nature of— Financial Commissioner only to interpret them.

Land Revenue Rules are issued with the approval of Government and it is not within the powers of the Financial Commissioner to add anything to them without the approval of Government; but he can of course interpret them and his interpretation is binding on Subordinate Revenue Courts and Officers, until it had been overruled by his successor.

Lambardar—dismissal of—effect—presumption as to influence of dismissed Headman on his sons and relations—Land Revenue Rule 17.

There is a presumption that the disqualification of being under the influence of the dismissed Headman exists in the case of his sons and less strongly in the case of his brothers and that in the case of more distant relations, the question is one for proof on the merits in each case.

Reference made by the Commissioner, Lahore Division.

ORDER.

I am asked by the Commissioner of Lahore to give a ruling as to the precise meaning of the orders contained in paragraph 109 of the Excise Manual, namely, relating to the exclusion of all the members of the branch of the family from succession to a *Lambardari* of a Lambardar who is dismissed for joining in, or concealing, illicit distillation. This order is of very old standing and dates, I need hardly say, from a time when the distinction between reserved and transferred subjects was not heard of. Excise is now a transferred subject, and I presume that the orders contained in the Excise Manual now have the authority of the Ministry of Agriculture. It is now out of place that these orders should contain instructions as to the action to be taken by officers serving in reserved departments with respect to a reserved subject. Further I doubt whether these orders ever had validity except as an interpretation of Land Revenue Rule No. 17 (ii) (b) which lays down that where a Headman has been dismissed for a serious offence or disqualification, the Collector may refuse to appoint any of his heirs (a) whose eligibility is affected by such offence or disqualification, or (b) who may reasonably be supposed to be under the influence of the dismissed Headman to an undesirable extent. Land Revenue Rules are issued with the approval of Government, and I do not think it is within the powers of the Financial Commissioner to add anything to them without the approval of Government; but he can of course interpret them, and his interpretation is binding on subordinate revenue Courts and officers until it has been overruled by his successor. I, therefore, propose to regard paragraph 109 of the Excise Manual as summarising a long established practice of the Financial Commissioner's interpreting Land Revenue Rule 17, and the ruling that I shall give must be understood as my interpretation of Land Revenue Rule 17. From this point of view I consider that the first question to be regarded is whether the claimant may reasonably be supposed to be under the influence of the dismissed Lambardar. This may fairly be presumed in the case of his sons and probably in the case of his brothers: but in the case of more distant relations it is a question of fact. The position held by the dismissed Lambardar in the village largely determines the question whether his cousins are under his influence. If the claimant is not excluded under this clause, there is a

more difficult task of determining what is meant by the expression "whose eligibility is affected by such offence or disqualification." I am disposed to think that it does not contribute to a decision of the question now before me. It probably refers either to the case of the claimant being implicated in the offence or to the disqualification of an heir by debt or insufficient holding of land. That being so, I have nothing to add to my ruling above which is to the effect that there is a presumption that the disqualification of being under the influence of the dismissed Headman exists in the case of his sons and less strongly in the case of his brothers, and that in the case of more distant relations the question is one for proof on the merits in each case.

Reference answered.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate side.

Revenue.

No. 57 of 1927-28. (Decided on 23-7-1928.)

Craik, F. C.

Subedar-Major HARCHAND SINGH

Appellant

Versus

Jamadar BUR SINGH

Respondent.

Lambardar—appointment of—preference to be given to
candidate—residing in Chak lambardari not to be inducement to
retire.

The lambardari should go to a candidate who is resident in the Chak in preference to another candidate who, though senior in military service and rank, is still serving with a regiment and cannot therefore reside. The lambardari should not be used as an inducement to retire from service.

Appeal from the order of the Commissioner of Multan.

ORDER.

The facts are sufficiently stated in the Commissioner's order of the 19th of April, 1928, against which this appeal has been preferred. The Commissioner has, in my opinion, decided rightly that the Lambardari should go to a candidate who is resident in the Chak, in preference to another candidate who, though senior in military service and rank, is still serving with a Regiment, and cannot, therefore,

reside. In arriving at this decision the Commissioner has followed the principle laid down by Mr. Abbott in his order of the 2nd of August, 1922, in Revenue Appeal No. 54 of 1921-22, viz., that a *Lambardari* should not be used as an inducement to retire from service.

In the circumstances, I am not disposed to interfere, and I reject the appeal. Parties to be informed. Costs, if any, to be borne by the appellant.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 54 of 1927-28. (Decided on 4-9-1928).

Miles Irving, F. C.

AMAR NATH

Appellant

Versus

CROWN

Respondent.

Excise Sub-Inspector—duping a person to make him an informer—transfer, if justified.

Where an Excise Sub-Inspector went to a village and caught hold of one "L" and made him put his thumb-impression on a blank paper in order to make him informer by duping him, held, that his transfer was justified.

Appeal from the order of the Commissioner of Lahore.

ORDER.

The story as told by the appellant is that he went accompanied by a police constable to the notorious village of Kaleke in order "to utilize the services of Labh Singh by duping to make him an informer," and in pursuance of this object sent for Labh Singh. He has also said in his previous report that he used the police constable to collect the villagers. The Commissioner has accepted the view of the investigating officer that when Labh Singh arrived, appellant tried to get him to put some pressure on Labh Singh, then it is inconceivable how he expected to carry out his declared object of "duping him to make him an informer." One does not and cannot dupe a man by summoning him against his will to a public conclave convened by a policeman, nor would an informer

obtained in such a public way be of the slightest use. If I believed appellant's statement that he sent for Labh Singh to make him an informer, I should feel bound to remove him from the service as an hopeless fool.

I then have to seek for some object for sending for Labh Singh. Three witnesses have retracted previous statements that appellant tried to make Labh Singh put his thumb impression: the constable also denies this and so does a witness Ghulam Muhammad: some of them repeat the silly statement that appellant asked Labh Singh publicly to entrap Raje Singh—a statement which I repeat if true would require appellant's removal as hopelessly incompetent. On the other hand, Baghal Singh supports the story as do Labh Singh and his father and a *chawkidar*. In the absence of any other credible motive for calling for Labh Singh this story is very probably true.

In any case appellant by going to the village with a police constable (a) disobeyed the orders of his superior officer to proceed quietly and (b) acted in a manner not justified by his powers to investigate (there being no offence reported) (c) acted in a manner only comprehensible in one of two suppositions—hopeless ignorance of the just principles of investigation or an attempt to put pressure on Labh Singh.

I give him credit for thinking that it was within his duty and powers to bring off this bluff: but it was within neither, and he must pay the consequences.

I think the sentence is on the severe side, but not to the extent which would justify altering the Commissioner's decision and if I had any doubts on the subject they would be set at rest by the gratuitous attack appellant has made on the Inspector. The falsity of his charges is apparent from the record. The Inspector in his report of 15th November 1927 merely recommended his transfer. Appeal rejected. I do not think it necessary to hear counsel.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 201 of 1927-28. (Decided on 18-9-1928).

Miles Irving, F. C.

ATMA RAM

Applicant

Versus

CROWN

Other side

Stamp Act, S. 33 (1)—deed of compromise amounting to conveyance—embodied in decree—requires to be stamped—duty of Registrar.

A deed of compromise which is a conveyance at the time it is written, though it ceases to require registration after it had been embodied in the decree, still requires to be stamped and the fact that it does not require registration does not excuse a Registrar of his duties under S. 33 (1) of the Stamp Act from impounding it, if it is produced before him, even if it need not have been so produced.

Revision from the order of the Collector, Lahore District.

ORDER.

The first question for decision in this case is whether the deed of compromise dated 28th June 1927 is a conveyance. The deed recites that Atma Ram plaintiff has been put in possession of certain immovable property and it also states that the defendants agree to pay Rs. 500 and the plaintiff has a right to recover this amount by execution in this case. It was in consequence of this deed that a decree for Rs. 500 was passed against the defendants. I consider that as far as the immovable property is concerned the deed actually did convey the property which was permanently transferred by it to the plaintiff in consideration of the money for the claims which had been pending in the Courts. Therefore, I consider that as far as the immovable property is concerned it was not included in the operative part of the decree. On the other hand, as stated in Privy Council judgment at page 496 of Calcutta 47, the decree taken as a whole would include the agreement. It is, therefore, quite possible from the point of view of the Registration Act that the decree embodying the whole of the compromise does not require registration.

This is, however, not the question before me. Let it be granted that the decree would have been admissible in evidence of the whole of the transaction without registration, it, nevertheless, remains the fact that the deed of compromise at the time it was written was a conveyance and as such even if it ceased to require registration after it had been embodied in the decree it still required to be stamped. The fact that an instrument does not require registration does not excuse a Registrar of his duties under section 33 (1) of the Stamp Act from impounding it if it is produced before him even if it need not have been so produced. Furthermore, although the deed need not have been registered after the decree, it should have been registered for presentation to the Court. See page 1076 of Woodroffe and

Amir Ali's Commentary on Civil Procedure Code—the compromise ought to be carried out by proper deeds. This point, however, is not material. I, therefore, find that as regards the immovable property the compromise deed has rightly been charged with stamp duty as a conveyance.

The next point is whether the penalty is excessive. I see no reason to interfere in this matter.

Finally, it is to be decided from whom the penalty is to be levied. Under section 29 (c) of the Stamp Act orders originally were, in the first instance, issued to two parties to pay half and half, but when the defendants refused, the whole was levied from the plaintiff alone. In the absence of an agreement to the contrary, section 29 (c) of the Act says that in the case of a conveyance the stamp duty is to be paid by the grantee.

For the above reasons I reject the application.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 59 of 1927-28. (Decided on 25-9-1928).

Miles Irving, F. C.

GHULAM MOHAMMAD and others

Appellants

Versus

SALABAT and others

Respondents.

Punjab Land Revenue Act, S. 117—question of title—which court to decide.

Held, that as regards whether a question of title should be decided by the Revenue Officer himself or whether parties should be referred to a Civil Court, no legal question arises, but the Revenue Officer, if he decides the case, will be acting in all respects as a Civil Court.

Appeal from the order of the Commissioner of Multan Division.

ORDER.

On the question of limitation I consider that the Commissioner exercised a right discretion.

As regards whether a question of title should be decided by the Revenue Officer himself or whether parties should be referred to a Civil Court no legal question arises. The Revenue Officer, if he decides the case, will be acting in all respects as a Civil Court. The question is one to be decided on the lines laid in Standing Order 28, which are based largely on the *bona fide* character of the application for partition. I consider that in this case the Commissioner was right in ordering the Collector to decide any question of title that might arise. I do not consider that his order, which relates certain facts and tentatively draws conclusions from them, which it expressly does not say are absolute, prejudices the case.

I reject the appeal *in limine*.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 65 of 1927-28. (Decided on 25-9-1928).

Miles Irving and Craik, F. Cs.

Mirza NASIR ALI BEG	<i>Appellant</i>
	<i>Versus</i>			
INDAR SAIN	<i>Respondent.</i>

Appeal—competency of—mere removal of name from candidates' list—not tantamount to refusal to promote—selection of a Head Treasury Clerk—if comes under rules.

The maintenance of a list of candidates is merely a matter of administrative convenience, and the removal of a name from such a list is not an order against which an appeal lies under the Classification Rules, except in a case in which it might be regarded as tantamount to a refusal of promotion. This does not apply to selection as a Head Treasury Clerk.

ORDER.

Miles Irving, F. C.—The maintenance of a list of candidates is merely a matter of administrative convenience, and the removal of name from such a list is not an order against which an appeal lies under the Classification Rules except in a case in which it might be regarded as tantamount to a refusal of promotion. This does not apply to selection as a Head Treasury Clerk. The appeal is, therefore, rejected.

Craik, F. C.—I concur.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 136 of 1927-28. (Decided on 29-9-1928).

Miles Irving, F. C.

ARJAN DAS and others

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*Applicants**Versus*

DIWAN CHAND and others

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Respondents.

Punjab Tenancy Act, S. 84—revision—erroneous decision upon a question of law or fact—if ground for.

To form an opinion, even if erroneous, is neither to fail to exercise jurisdiction nor to act with material irregularity. A Court cannot interfere in revision, because there has been an erroneous decision upon a question of law or fact.

Revision from the order of the Commissioner of Rawalpindi Division.

ORDER.

It is suggested in the application for revision that the Collector failed to exercise the jurisdiction vested in him by law and acted with material irregularity in that he did not appreciate the true fact patent on the record and either ignored or unnecessarily minimised the plaintiffs' evidence. It should but be necessary for me to say that to form an opinion, even if erroneous, is neither to fail to exercise jurisdiction nor to act with material irregularity. A Court cannot interfere under section 105 because there has been an erroneous decision upon a question of law or fact. I can find no suggestion that the decision in this case has been arrived at otherwise than in a perfectly legal way and I decline even to consider whether the evidence has been properly appreciated.

As to the suggestion that the case should have been referred to a Civil Court, I agree that there is no doubt that the suit lay in a Revenue Court. I decline to interfere.

Interference declined.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 69 of 1927-28. (Decided on 29-9-1928).

Miles Irving, F. C.

BUTA

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*Appellant**Versus*

JAI CHAND

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Respondent.

Lambardar—appointment—change of religion or dismissal of

father for incompetence does not disqualify son.

No disability attaches to a son for the appointment as Lambardar by reason of his father having been dismissed for incompetence; nor can change of religion by such son be a ground to detract from any hereditary right; but where there is no hereditary claim, the question of change of religion can be brought forward in considering whether one man is, as a matter of fact, fitter than another.

Appeal from the order of the Commissioner of Lahore Division.

ORDER.

Attar Singh, the founder of the village, was dismissed in 1893 from the Lambardari as he could not collect the revenue. He was succeeded by Kura Mal, Brahman, who was followed by his son who has died without male issue. The Collector appointed Buta, son of Attar Singh. Jai Chand, son-in-law of the last lambardar, appealed.

The Commissioner, while not satisfied that Jai Chand was suitable, accepted the appeal so far as it related to the appointment of Buta.

His grounds are :

- (a) that Attar Singh was dismissed and
- (b) that Buta has changed his religion and became a Muhammadan, whereas all the other proprietors are Hindus. I do not think that the first ground is meant to be very seriously taken, as the Commissioner has ordered the claims of another son of Attar Singh to be considered. It is clear to my mind that no disability attaches to either son of Attar Singh by reason of their father having been dismissed for incompetence in 1894.

The ground of change of religion cannot apply to detract from any hereditary right—see Act 21 of 1850, Caste Disabilities Removal Act. Whether where there is no hereditary claim the question of change of religion can be brought forward in considering whether one man is, as a matter of fact, fitter than another, is another matter; it might be possible for Collector to say "other things being equal, I pass you over not because you have changed your religion but because your neighbours dislike you for changing your religion and you will not in effect be useful." But it is an argument to be used with great circumspection and is certainly not one for upsetting a Collector's order. On the other hand, I am not prepared to accept Buta's appeal because I am not clear as regards the position of Jai Chand. He states that he was the *khanadamad* of the late Lambardar.

but does not definitely state, though he apparently implies, that he was the adopted son. If he was, then the question arises if he has not a hereditary claim. On the other hand his non-residence may be a bar.

I therefore so far accept Buta's appeal that I order his claim to be considered *de novo* with that of the other claimants.

It is unnecessary to hear either party.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 119 of 1927-28. (Decided on 29-9-1928).

Revenue.

Miles Irving, F. C.

MUHAMMAD YAQUB

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Applicant

Versus

JAWAYA known as Allah Jawaya

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Respondent.

Punjab Tenancy Act, S. 84—revision—court not concerned with correctness of finding of fact—to interfere only in case of material irregularity or failure to do substantial justice.

A Court of Revision is not concerned with the correctness of finding of fact. It can interfere, whether it agrees with that finding or not, only if there has been material irregularity in the manner in which it has been reached or defect of jurisdiction, or if it considers that substantial justice has not been done. But a finding made regularly after the Court has applied its mind to it is not perverse so as to justify interference because the Court of Revision would itself come to a contrary conclusion.

Held further, that it is not for a Court of Revision to interfere on the ground that it thinks the reasoning of the first Appellate Court is superior 1 P. R. 1914 (Rev.), referred to.

Revision from the order of the Commissioner of Jullundur Division.

ORDER

The only point in this case is that of limitation. Whether the suit is or is not barred by time, depends upon a question of fact: namely, whether plaintiff was or was not in possession in a certain harvest. I am not as a court of revision concerned with the correctness of the finding on that fact: whether I agree with it or not I can only interfere if I find that there has been a material irregularity in the manner in which it has been reached. Now, the onus was in the lower

Court rightly laid on the plaintiff to prove that his case was within limitation: and there is no indication either in the grounds of revision nor in the judgments of the three lower courts of any irregularity small or great in the proceedings. It is suggested in *Mahan Singh v. Narain Singh* (1) that even in the absence of lack of jurisdiction or material irregularity interference might be justified in circumstances of an altogether exceptional nature if there was absolute perversity in the finding or serious misapplication of the law of evidence. This was by way of an *obiter dictum* as the Financial Commissioner did not interfere in that case. As an abstract proposition I am not concerned to deny it, as serious misapplication of the law of evidence might amount to a material irregularity, and it is not possible to say that there could not arise a case of perversity so flagrant as to justify the Financial Commissioner in stepping beyond the limits imposed on him by law. But a finding made regularly and after the court has applied its mind to it is not perverse because the court of revision would itself come to a contrary conclusion. Another suggestion that has been drawn from the rulings of my predecessors is that in the absence of lack of jurisdiction or material irregularity, a court of revision can interfere if it considers that substantial justice has not been done. Now it has been several times ruled that unless there has been a failure to do substantial justice the Financial Commissioner need not interfere even if there has been irregularity, but that is quite another matter, and I know of no case in which there has been interference to secure substantial justice when there has been no defect of jurisdiction and no material irregularity.

Now in this case the second Appellate Court after applying its mind to the case has formed certain conclusions from the evidence which are in agreement with those of the trial court and in disagreement with those of the first Appellate Court. It is not for a court of revision to interfere on the ground that it thinks the reasoning of the first Appellate Court superior. I, therefore, decline to interfere.

Revision rejected.

(1) I. P. R. 1944 (Rev.)

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 110 of 1927-28. (Decided on 1-10-1928).

Miles Irving, F. C.

Sheikh IMAM-UD-DIN

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*Applicant**Versus*

FAZAL KARIM and others

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*Other side.***Punjab Tenancy Act, S. 88—Civil P. C., S. 151—appealable order—
use of S. 151 does not affect appealability.**

An order which is of itself appealable does not cease to be so because S. 151 has been used. A. I. R. 1927 Cal. 867 referred to.

**Punjab Tenancy Act, S. 84—revision—refusal to extend period
of limitation—interference.**

Where a trial court refused to extend the period of limitation : held, that it did not act either illegally or with irregularity, as a matter of fact its action was in accordance with the rulings.

Civil P. C., S. 151—Scope.

Held, that S. 151 cannot be invoked to help a party who has a remedy provided by law and has neglected to avail himself of it.

Revision from the order of the Commissioner of Rawalpindi Division.

ORDER.

The order of the trial court which has been restored is in effect a refusal to use the provisions of section 151, C. P. C. to restore a case which had been dismissed in default, when the application for restoration was not made in a valid form until after the period of limitation had elapsed.

The case was dismissed in default on a gazetted holiday and the first Appellate Court thought that the order was thereby null and void. He therefore, by an exercise of section 151, restored the case in spite of the period of limitation having expired. The second Appellate Court has upheld the trial court's decision.

Now had the order been null and void the question of limitation would not have arisen. Limitation cannot run from what does not exist and the error could have been attached at the root by sending the case on revision to guard the order. But it is not null and void as Section 102 of the Tenancy Act shows but was at the most an error, and section 151 cannot be invoked to help a party who has a remedy provided by law and has neglected to avail himself of it. I need therefore not consider the fact that the order was passed on a holiday.

I may say in passing that it was known in ample time that it had been passed, and the delay in applying for restoration was due to the absence of a power of attorney as to which the provisions of Act XXII of 1926 are clear.

Now as regards the order of the trial Court refusing to extend the period of limitation. The Court may or may not have acted harshly in refusing to use its inherent power, but I cannot say that it acted either illegally or with irregularity ; as a matter of fact, its action was in accordance with the rulings.

Then comes the question of the order of the first Appellate Court. This Court exercised the right under Section 151 and ordered the case to be restored. It has been ruled in *Khetro Mohan Mitter v. Nalini Bala Dassi* (1) that there is no appeal against an order under Section 151; and it is argued that the second appellate Court could not revise this order. This is a misunderstanding. An order, which is, of itself appealable, does not cease to be so because Section 151 has been used. Otherwise, one would get the absurdity that, if the application had been in time, an order, restoring it, would have been appealable, but, because, it was barred, the order becomes unappealable. There is, therefore, a second appeal against the Collector's order, reversing the order of refusing to restore the case.

It follows then that there has been no illegality or material irregularity, and I am debarred by Section 115 from considering the equities of the case in the absence of such irregularity or illegality.

Revision refused.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue

No. 188 of 1927-28. (Decided on 19-10-1928).

Craig, F. C.

Mst. KIMON

Applicant

Versus

JIWAN

Respondent.

Punjab Colonisation of Lands Act—S. 21 (a)—Death of tenant-at-will—mother succeeding son—acquisition of occupancy rights—succession to mother—to be regulated by S. 21 (a).

On the death of a tenant, land was mutated in favour of his mother and she acquired occupancy rights. On her death held that it was a case of fresh allotment in her favour and that succession must be regulated by S. 21 (a) of Act

(1) A. I. R. 1927 Cal, 867.

V. of 1912 and that her issue, namely, her daughters are entitled to succeed in preference to collaterals of her son.

129 P. R. 1916 ; 6 L. 134 ref.

Case forwarded by the Commissioner of Multan.

ORDER

This case has been referred by the Commissioner of the Multan Division under S. 16 (3) of the Land Revenue Act. The facts appear sufficiently from the Commissioner's order of reference, dated 26th of May, 1928. In that order the Commissioner has taken the view that the order of the Colonization Officer passed on the 25th of April, 1898, on the death of the original tenant, Karim Bakhsh, amounted to a fresh allotment of the land to Mst. Gohri, the mother of Karim Bakhsh. It follows from this, according to Commissioner, that Mst. Gohri must be regarded as the tenant to whom the tenancy had been first allotted, and that on her death the succession devolves under S. 21 (a) of Act V of 1912 on the successor nominated by the Collector from the issue of Mst. Gohri. It is admitted that Mst. Gohri acquired occupancy rights on the 30th of June, 1898 and remained in possession till her death in February, 1926. According to the view taken by the Commissioner, her daughters, the present petitioners, are entitled to succeed to their mother as the land was the self-acquired property of the deceased.

In support of this view Counsel for the petitioners has cited *Sewa Singh v. Mst. Bholi* (1) *Narain Singh v. Mst. Sada Kaur* (2).

On behalf of the respondent, Jiwan, who is the nearest male agnate (father's brother) of the original grantee, Karim Bakhsh, it is argued that as the time of Karim Bakhsh's death, succession should have been governed by the ordinary Customary Law, as Act III of 1898, which was in force at that time but which was repealed by S. 2 of Act V of 1912, did not provide for cases of inheritance, and S. 59 of the Punjab Tenancy Act also did not apply, as Karim Bakhsh had not acquired occupancy rights. Counsel for respondent argues that the intention of the Colonization Officer's order of the 25th of April, 1898, was merely to regulate the succession according to the ordinary Customary Law, under which, in the absence of any issue of the deceased, a mother succeeds to a life interest in the estate in preference to male agnates of the deceased.

The actual wording of the Colonization Officer's order of the 25th of April, 1898, was as follows: "Mutation is sanctioned in favour of *Mussammatt* Gohri, mother of the deceased, for her life."

The Commissioner takes the view that the words: '*for her life*' were

(1) 129 P. R. 1916.

(2) I. L. R. 6 Lah 134.

redundant and not justified by any law or rule on the subject, and that the order must be read as an order allotting the land *de novo* to *Mussammat Gohri*.

Counsel for respondent has also pointed out that in 1919 *Mussammat Gohri* applied for sanction to acquire proprietary rights in the land and deposited the necessary sum of money. The Collector, however, rejected her application by an order of the 5th of September, 1919, which read as follows; "I do not allow acquisition of proprietary rights as this would prejudice the rights of the collaterals (*warisan-i-bazgash*)."

It is further contended that *Mussammat Gohri* would not have been allowed to succeed, but for the fact that she was the mother of the original grantee, and that, therefore, the order of April, 1898, must be regarded as an order sanctioning an inheritance, and not as an order freshly allotting the land. It is, however, significant that counsel for respondent explicitly admitted in the course of his argument that Government could, had it so desired, have resumed the grant on *Karim Bakhsh's* death.

Counsel for respondent argues that the case can be distinguished from the present case, as in that case the widow, who had acquired occupancy rights in 1906, was permitted by Government to gift those rights to her daughters as provided by Section 8 of Act III of 1893. That Act, as already noted, was repealed by Act V of 1912. Counsel has also argued that case No. 129 of 1916, can be distinguished from the present case, as in that case the widow had acquired full proprietary rights in the land. I am, however, unable to see that this distinction is material.

On the whole, I am of opinion that the Commissioner has taken the correct view of the case, and that when the land was mutated in favour of *Mussammat Gohri* in April, 1898, it was, in fact, a case of a fresh allotment in her favour. It is true that the allotment would probably not have been made had she not been the mother of the original grantee. But the original grantee was a tenant-at-will of Government and as admitted by counsel for respondent, Government had full power to resume the grant altogether and could have regranted it to some person altogether unconnected with *Karim Bakhsh*. In these circumstances, the grant to *Mussammat Gohri* was, in my opinion, an entirely fresh allotment, and it follows that, on *Mussammat Gohri's* death, the succession must be regulated by Section 21 (a) of Act V of 1912, her issues namely her two daughters, *Kimon* and *Himon*, being entitled to succeed.

Judgment announced to the parties. No order as to costs.

Order Accordingly

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 15 of 1928-29. (Decided on 25. 10. 1928).

Craig, F. C.

Captain SAWAN SINGH and another

*Appellant**Versus**Mst. PREM KAUR**Respondent.*

Crown lands—grant of—proprietary rights to a widow of the last incumbent—subsequent resiling therefrom is unjustified.

Where the Deputy Commissioner, acting not as a revenue Court or revenue officer, but as the agent of the Government in its capacity of landlord, granted permission to acquire proprietary rights in certain squares of lands to the widow of the last incumbent (holder) of the same and the widow deposited the necessary sum in the treasury in pursuance of the said order, held that the contract being completed by the said deposit, the Deputy Commissioner could not resile from it subsequently, merely because certain facts came to his knowledge which were not within his knowledge when he agreed to the contract.

(ii) Punjab Tenancy Act, S. 80—orders passed in executive proceedings—right to interfere on appeal.

Held it was doubtful whether the F.C. could interfere on appeal with orders passed by the Commissioner.

Appeal from the order of the Commissioner of Multan Division.

ORDER.

The facts of this dispute are fully stated in the order of the Deputy Commissioner, dated the 30th of November, 1927. I consider that the Commissioner has taken the correct view in his appellate order of the 31st of July, 1928. By his order of the 27th of July, 1927. Mr. Mitchell permitted Mst. Prem Kaur to acquire proprietary rights in her holding and it appears that the transaction of acquiring proprietary rights was actually completed on the first of August, 1927, when Mst. Prem Kaur deposited the necessary sum in the treasury. In giving permission to acquire proprietary rights, the Deputy Commissioner, as pointed out in Mr. Mitchell's order of the 30th of November, 1927, acted not as a revenue Court or as a revenue officer but as the agent of Government in its capacity of landlord. As agent to Government, he was party to a contract which was completed by the payment into the treasury on the first of August, 1927; and I consider that the Commissioner was right in holding that he could not resile

from that contract because, subsequently, certain facts came to his knowledge which were not within his knowledge when he agreed to the contract.

Further the orders of the Deputy Commissioner of the 30th of November, and of the Commissioner of the 31st of July (1928) were, in essence, executive proceedings, and I doubt very much whether I have power to interfere as a Court of appeal.

For these reasons I reject the application. The parties have their remedy in a Civil Court.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 63 of 1927-28. (Decided on 22.11. 1928.)

Townsend, F. C.

MUNSHI RAM

.. ..

Appellant

Versus

CROWN

Respondent.

Classification Rules—Rule XVI, Appendix E—Financial Hand Book No. 2—Head Vernacular Clerk—candidate.

Held that no appeal lies from an order, removing a person's name from the list of Head Vernacular candidates or placing it at a lower place on that list than that to which he considers himself to be entitled, as it does not follow that man, whose name is on such a list, will eventually get any such appointment.

Appeal from the order of Commissioner, Ambala Division.

ORDER.

In this order I dispose of nine appeals, filed by various persons aggrieved by the order of the Commissioner of Ambala, either removing their names from the list of Head Vernacular Clerk candidates altogether, or placing them at a lower place on that list than that to which they consider themselves to be entitled. The first thing to decide is whether appeals lie to me in this matter. I consider that the responsibility for maintaining a list of suitable candidates rests entirely with the Commissioner. The maintenance of such a list is merely a matter of administrative convenience, and the Financial Commissioners held, on September 25th, 1928, in Revenue Officer's Appeal No. 65 of 1927-28, that Rule XVI in appendix E to Financial Hand Book No. 2 gives no right of appeal in such a case, (as it does not follow that a man, whose name

is on the list of Head Vernacular Clerk candidates, will eventually get any such appointment). With this view I agree. I, therefore, hold that no appeal lies to me, and reject all these appeals.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER, OF THE
PUNJAB.

Revision Side

Revenue.

No. 67 of 1926-27. (Decided on 17. 12. 1928)

Townsend, F. C.

ILAM DIN ..

Applicant

Versus

SULTAN KHAN ..

Other side.

Punjab Tenancy Act, Ss. 44 and 88—order of ejectment—application for restitution of proceedings—insufficient proof of—service of notice—Restoration should be ordered.

An order of ejectment had been passed against an exceptionally poor and ignorant tenant. The only proof of service of notice under S. 44 was that by registered post. The tenant applied for restitution of proceedings. Held under the circumstances that the case should be restored.

Revision against the order of Collector, Jhelum.

ORDER.

Both heard.

For the reasons given in the reference by Commissioner, Rawalpindi, dated 17-12-1928, I cancel the order of ejectment of Ilam Din, dated 4-6-1926, and all subsequent proceedings.

If the landlord again takes action to put S. 44, Tenancy Act in motion, the Assistant Collector, 1st grade, Chakwal, must keep the matter entirely in his own hands, and not make it over to any Revenue Officer of lower grade for disposal. The tenant, Ilam Din, is an exceptionally poor and ignorant man, and deserves every consideration consistent with justice to the landlord that he can get.

Revision allowed.

Order of the Commissioner, referred to above, is as follows :—

The history of this case is given in the order of the Collector, Mr. R. Wilson, dated the 26th February 1928, in which it was recommended that the order of ejectment, dated the 4th June 1926, be set aside and fresh

proceedings be ordered with due notice to the defendant. The Financial Commissioner ordered that the Assistant Collector's order, dated the 18th September 1926 be set aside. The setting aside of this order can have no effect on the situation, because, the retrial of the suit under S. 50 must result in its dismissal so long as the order of ejectment under S. 44 remains valid. The fairness of that order depends on whether Ilam Din had a reasonable opportunity of paying the rent due from him or not. I am not satisfied that he had, as the proceedings in the rent suit case were *ex parte* and so were the execution proceedings. The landlord is a rich man. I find from his agent's statement that it is very inconvenient for him to have Ilam Din's occupancy rights existing in the land in question, and it may well be that the peons etc., concerned in the service of notices and in attachment proceedings, were not careful to see that Ilam Din really had notice. The address, given in the Postal receipt for the registered notice issued to Ilam Din in the original rent suit, was certainly insufficient for purposes of service. The order of the Assistant Collector, dated the 30th July 1926, rejecting Ilam Din's application for restitution, appears to me to have been irregular, as he did not satisfy himself that Ilam Din had information of the decree in time to permit him to apply for restitution within thirty days. I recommend that this order and all subsequent orders be set aside and that the application for restitution of the rent suit be determined afresh. Both parties wish to appear before the Financial Commissioner. (I note that Ilam Din's counsel has taken up this case entirely out of charity and his engagement does not argue the possession of means by Ilam Din who appears to be practically destitute). Accordingly, I submit the file to the Financial Commissioner with a recommendation that the order of the Assistant Collector, dated the 30th July 1926, rejecting Ilam Din's application for restitution of the suit be set aside and that all subsequent orders be cancelled.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 5 of 1927-28. (Decided on 20-1-1928).

Craig, F. C.

SURAIN SINGH

*Appellant**Versus*

MENGH SINGH

Respondent,

Lambardar—creation of new post—promising of post to a person enlisting in army—rewarding of the person—if justified.

Where a younger brother joined the army on a promise by his father that he would succeed to Lambardari in preference to his elder brother, held, that

the father had no power to give such promise and the creation of a new post is not the way to reward person for his patriotic action.

Appeal from the order of the Commissioner of Multan,

ORDER. (23rd January, 1928).

This is an appeal against the sanction accorded by the Commissioner of the Multan Division on, under Land Revenue Rule 14, to the creation of an additional *Lambardari* in village No. 257 R.B., in the Lyallpur District. The sanction was conveyed in the Commissioner's Letter to the Deputy Commissioner, No. XVIII-26 D., dated the 2nd of August 1927.

The circumstances in which the Deputy Commissioner proposed an increase in the number of *Lambardars* are stated in his letter to the Commissioner, No. 271, dated the 2nd of June, 1927. Wasawa Singh, the father of both parties, filed an application some years before his death, stating that his younger son, the respondent Mengh Singh, had enlisted in the army during the War on the promise that he should succeed to the *Lambardari* in preference to his elder brother, the appellant Surain Singh. This application was made about the time when Mengh Singh enlisted in the 1st-19th Punjabis. This was on the 15th of January 1915. His discharge certificate, which I have seen, is to the effect that he served in that unit for about one year and two months and bore a good character. Shortly before his death, which apparently occurred in October, 1926, Wasawa Singh appears to have repented of his promise to Mengh Singh, and stated that he desired the elder son, Surain Singh, to succeed him. The Deputy Commissioner admitted in his letter of 2nd of June, 1927, that Surain Singh was the only son legally entitled to succeed, but added that it seemed clear that the younger son was persuaded to enlist on being given promise, to which the elder brother very likely assented, that he should succeed to the *Lambardari*.

The area of the *Kamboh's patti* in this village is 56 squares, of which $35\frac{1}{2}$ are in the *patti* of the deceased Wasawa Singh and $20\frac{1}{2}$ in the *patti* of another *Kamboh Lambardar*. The land revenue and *abiana* of Wasawa Singh's *patti* is Rs. 13,178 and that of the other *patti* Rs. 7,495. The Deputy Commissioner pointed out that if Wasawa Singh's *patti* was divided into two, the demand for each *patti* would be about equal to that of the other *Kamboh Lambardar's patti*. On these facts he concluded that apart from the special features of the case (the reference here being to the promise given to Mengh Singh) there seemed to be justification for an additional *Lambardar*. This proposal was, as already stated, sanctioned by the Commissioner, in his letter of the 2nd of August, 1927.

Mr. Anant Ram Khosla for the appellant has pointed out that neither

the Commissioner nor the Collector gave his client any opportunity to show cause against the creation of a new *Lambardari*. In this connection Anant Ram alluded to the judgment of Mr. Casson in case No. 36 (Revenue) of 1921-22, *Amar Singh v. Harnam Singh* (1), which indicated that in such cases opportunity to show cause should be given. Counsel alleged that if opportunity had been given, his client would have been able to prove that he also volunteered for enlistment but was rejected by the Recruiting Officer, and also that the majority of the owners of the *patti* are against the creation of a new *Lambardari*. It is admitted that the *pachotra* of Wasawa Singh's *Lambardari* is Rs. 491 per annum, and counsel pointed out that the division of this *pachotra* and of the *Lambardari* square into two portions would very seriously affect the financial position of his client.

For the respondent Mr. Sleem has stated that as regards opportunity for showing cause the matter was entirely in the discretion of the Revenue Authorities. He admits that Wasawa Singh's promise that the younger brother should succeed to the *Lambardari* was not legally binding on the Revenue Authorities, but that there is no real administrative objection to giving effect to that promise. Mengh Singh enlisted at the time when recruits were difficult to obtain, and it is only fair that he should be rewarded for his patriotic action.

In my opinion little importance need be given to the promise given by Wasawa Singh to his younger son that he would succeed in the *Lambardari*. Wasawa Singh was not empowered to make any such promise, and I have no doubt that Mengh Singh understood this perfectly well. In any case, before his death Wasawa Singh stated in writing that he desired his elder son to succeed, although at that time his younger brother was acting as *Sarbrah*. On administrative grounds I can see no good reason for the creation of a new post. Neither the area nor the *pachotra* attached to the existing post is excessive, and its sub-division into two would cause a serious loss to the appellant and would probably create lasting ill-will between the two brothers. Mengh Singh no doubt deserves credit for his patriotic action in enlisting in the army, but the proper way to reward his action is not the creation of an additional *lambardari* at the expense of his elder brother.

For these reasons I accept the appeal, and set aside the order of the Commissioner, dated the 2nd of August, 1927, sanctioning the appointment of an additional *Lambardari*. Respondents will bear the costs of this appeal.

Announced to the parties.

Appeal accepted.

LAHORE HIGH COURT.

Appellate.

Civil.

No. 597 of 1927. (Decided on 8-2-1928).

Tek Chand and Bhide, JJ.

MULRAJ

Appellant

Versus

INDAR SINGH and others

Respondents.

Punjab Alienation of Land Act, S. 11—lease for twenty years—option given to tenant to remain afterwards—validity.

Where lease was in the first instance only for a period of twenty years, held, that the mere fact that the lease-deed gave option to the tenant to remain in occupation afterwards on certain conditions cannot ipso facto convert it into a lease for a longer period and that such a lease does not contravene the provisions of Land Alienation Act.

Landlord and tenant—contumacious holding over—more than double rent claimed—whether excessive—Contract Act, S.74.

Where a tenant contumaciously holds over the land leased out to him for building purposes at an annual rent of Rs. 16, in spite of a notice to vacate the land and the land is situated in the midst of a flourishing mandi, held, that rent decreed at the rate of Rs. 100 per annum was not excessive. 33 P. R. 1898 and 5 P. B. 1904 referred to.

Second appeal from the decree of District Judge, Ludhiana.

Appellant :—by Mr. Jagan Nath Aggarwal.

Respondents :—by Mr. Fakir Chand.

JUDGMENT.

Bhide, J.—On the 11th January 1924, Benarsi Das, a Khatri, (father of defendant No. 1 and brother of defendant No. 2) took on lease two biswas and 5 biswansis of land from Kahn Singh, father of plaintiff. The land was admittedly agricultural at the time, though it was leased for building purposes. The lease purported to be for a period of 20 years at an annual rental of Rs. 16, but contained a clause giving the tenant option to continue in occupation after the expiry of that period on the same rent. This condition is now the chief bone of contention between the parties and ran as follows :—

“Agar muzari’ ba’d bist sal ayanda ko arazi apne qabze men rakbna chahega to is shara lagan se hasab razamandi malik rakhunga.”

At the time of mutation the Collector cancelled this condition— as contravening the provisions of the Punjab Land Alienation Act, as no lease for agricultural land (for a period of over twenty years) by a member of an agricultural tribe in favour of a non-agriculturist is permissible under that Act. After the expiry of the period of twenty years the lambar-dar gave notice to the defendants to vacate the land but as they failed

to comply with the terms of the notice he instituted the present suit for ejectment and damages for contumacious holding over at the rate of Rs. 2 per diem. Defendant No. 2 who contested the suit pleaded that by virtue of the condition noted above he was not liable to be ejected, that the Collector had no authority to cancel the condition, and that, in any case, the plaintiff was estopped by his conduct from asking for ejectment inasmuch as he permitted valuable buildings to be erected on the land.

The trial Court upheld these contentions and dismissed the suit.

On appeal the learned District Judge disagreed with the trial Court and granted a decree for ejectment and also for damages at the rate of Rs. 100 per annum. From this decision defendant No. 2 has filed a second appeal.

The only points urged on behalf of the appellant before us were (i) that the Collector's action in cancelling the condition in the lease quoted above was *ultra vires*, that the condition was still binding on the parties and that the defendants were, therefore, not liable to ejectment;

(ii) that the amount of damages awarded is excessive.

As regards the first point, the contention that the Collector had no power to cancel the condition in the lease referred to above, appears to me to be sound. The lease was in the first instance only for a period of twenty years and the mere fact that option was given to the tenant to remain in occupation thereafter, if he chose to do so, on certain conditions could not *ipso facto* convert it into a lease for a longer period (vide, *inter alia*, *Boyd, v. Kreig*) (1). But assuming this condition to be binding on the parties, it does not appear to me to support the appellant's contention that he is not liable to be ejected. According to the plain interpretation of the language used—"hasab razamandi malik", the tenants could only continue in occupation with the consent of the landlord. It was argued that these words merely recited that the consent of the landlord had been obtained and were equivalent to "according to the consent of the landlord already obtained." This interpretation seems to me to be a very far-fetched one. If the consent of the landlord was not needed for further occupation there was no point in inserting these words at all in the condition. The trial Court remarked that as the rent for the subsequent period of occupation had been fixed there was nothing left for which the consent of the landlord could be necessary. But there might be, obviously, other conditions of the tenancy, e.g. period of further occupation, etc., for which landlord's consent would be essential. The land had been leased for building purposes, and it cannot be assumed, in the absence of any clear recital in the lease to that effect, that the landlord intended to allow the tenant to remain in permanent occupation at the trifling rent of Rs. 16 per annum. The mere fact that valuable buildings were allowed to be constructed on the land cannot be taken as any indication of the intention of the parties.

(1) 17 Cal. 548.

to create a permanent tenancy, as it was clearly provided in the lease itself that, in the event of ejectment, the tenant was to remove the materials of the buildings. The decree for ejectment passed by the learned District Judge appears to me to be amply justified by the terms of the lease.

As regards damages, the learned District Judge has fixed them at Rs. 100 per annum. It was argued that the rent for "contumacious holding over" should not have exceeded Rs. 32 per annum, *i.e.* double the rent reserved by the lease. *Ganga Ram v. Mst. Shiv Devi* (2) and *Pirbhu Dial v. Ram Chand* (3) were cited as authorities. But these authorities do not lay down any such hard and fast rule. It was remarked in the latter ruling that double the rent may sometimes be taken as a fitting standard, but that, in considering what sum should be allowed for use and occupation, or for damages for contumacious holding over, the whole circumstances of the tenancy and the sufficiency in point of time of the notice may properly be taken into consideration—(*vide Pirbhu Dial v. Ram Chand*) (3). In the present instance, notice was given on 27th June 1923, *i. e.* about six months before the expiry of the period of the lease, and yet the defendants failed to vacate the land even up to the 6th February, 1926, when the present suit was instituted. After the expiry of the period of the lease the defendants appear to have had no legal justification for remaining in occupation of the land and seem to have done so merely on account of the substantial income they were deriving from the buildings which are now situated apparently in the midst of the flourishing Mandi. The plaintiff has produced evidence to the effect that the land in dispute would now fetch a rent of Rs. 700 to Rs. 1,000 per annum which stands un rebutted. Although this may be an exaggerated estimate of the rent, the amount fixed by the learned District Judge at Rs. 100 per annum does not appear to be excessive for a building site situated in a Mandi.

I would accordingly dismiss the appeal with costs. The defendants are given a further period of three months from this date to remove the materials of the building.

Tek Chand J.—I concur.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

No. 63 of 1927-28. (Decided on 22-11-1928)

Revenue.

Townsend, F. C.

MUNSHI RAM

Appellant

Versus

CROWN

Respondent.

**Appeal—head vernacular clerk candidate—removal from the list
of—rule XVI, Appendix E to Financial Hand Book No. 2.**

(2) 80 P.R. 1898

(3) 5 P.R. 1904

Held, that the responsibility for maintaining a list of suitable Head Vernacular Clerk candidates rests entirely with the Commissioner, the maintenance of such a list being a matter of administrative convenience, and that rule XVI in Appendix E to Financial Hand Book No. 2 gives no right of appeal from the order removing the name of a candidate from the list or placing him at a lower place on that list.

Appeal from the order of the Commissioner, Ambala Division.

ORDER.

In this order I dispose of nine appeals filed by various persons aggrieved by the order of the Commissioner of Ambala, either removing their names from the list of Head Vernacular Clerk candidates altogether, or placing them at a lower place on that list than to which they consider themselves to be entitled. The first thing to decide is whether appeals lie to me in this matter. I consider that the responsibility for maintaining a list of suitable candidates rests entirely with the Commissioner. The maintenance of such a list is merely a matter of administrative convenience and the Financial Commissioners held on September 25th, 1928, in *Mirza Nasir Ali Beg v. Indar Sain* (1) that rule XVI in Appendix E to Financial Hand Book No. 2 gives no right of appeal in such a case (as it does not follow that a man whose name is on the list of Head Vernacular Clerk candidates will eventually get any such appointment). With this view I agree. I, therefore, hold that no appeal lies to me and reject all these appeals.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Appellate Side.

Revenue.

No. 15 of 1927-28. (Decided on 2-2-1928.)

Miles Irving, F. C.

KALYAN SINGH

Appellant

Versus

HAIDAR

Respondent.

Zaildar—appointment by Collectors to be upheld—good service as Sufedposh to be given weight—duty of Appellate Courts.

Appointments made to the post of Zaildar or Sufedposh by Collectors should, as far as possible, be upheld on appeal both because the local officer is presumed to have better knowledge of the merits of the respective candidates for the appointment and also because it is most undesirable to encourage appeals against orders in this class of cases. Good service as a Sufedposh is to be given greater weight in considering personal services and the Sufedposh should be appointed when other things are equal or nearly equal; but this principle is subject to the general rule that the Collector's decision ought not to be upset. It is very desirable that Appellate Courts in Zaildari cases should, before calling

(1) 1 P.R. 1928 (3rd Quarter): 1928 P.C.L. 35 (Rev.)

a counsel, apply their mind to the case; and if they feel no doubt in the matter, save the parties the burden of legal expenses.

Appeal from the order of the Commissioner of Ambala Division.

ORDER.

The Collector of Rohtak appointed Kalyan Singh as *Zaildar*. Haidar appealed and the Commissioner accepted his appeal appointing him *Zaildar*, Kalyan Singh has now preferred a second appeal. Haidar is a *Sufedposh* of the *zail* with a satisfactory record. Kalyan Singh has the advantage over him in that he owns much more land and is a *Hindu Taga*, the predominant tribe in the *zail*, and is also the nephew of the late *zaildar*. One great principle has been laid down by the Financial Commissioners in the past in dealing with appeals in *zaildari* cases which is referred to in the case of *Badlu Ram v. Dani Ram* (No. 15 of 1926-27). It is that appointments made to the post of *zaildar* or *Sufedposh* by Collectors should, as far as possible, be upheld on appeal both because the local officer is presumed to have a better knowledge of the merits of the respective candidates for the appointment and also because it is most undesirable to encourage appeals against orders in this class of cases. 6 P. R. 1887; 5 P. R. 1890; 3 P. R. 1892; 1 P. R. 1913, are old and well-known cases. In No. 84 of 1919-20, Sir John Maynard accepting an appeal from a Commissioner's order observed that a mere difference of opinion regarding respective merits was not a good ground for interference with the order of a Collector, and in 254 of 1919-20 in refusing to interfere in revision he observed that it had more than once been laid down that the Deputy Commissioner's selection of a *zaildar* should not be interfered with merely on the ground that a higher authority might arrive at a different conclusion regarding the relative merits of particular candidates. In case 62 of 1922-23, Mr. King restoring the Collector's choice observed, "The Collector may not have been right in his selection, but the mere fact that the Collector has not chosen the better man is not a good reason for the Commissioner to interfere". But he went on to approve of the Collector's choice on its merits. In order to ascertain how far this principle has been departed from, I have examined a large number of cases on the appellate side of the Court for the last ten years and find that the Financial Commissioner has supported the Commissioner in reversing the Collector's order in the following cases:—

(1) Case 30 of 1918-19, Sir John Maynard. The candidate appointed by the Collector was deeply involved in debt.

(2) Case 26 of 1918-19, Sir John Maynard. The Collector had passed over a candidate who had acted 14 years as *Zaildar*. This candidate also had more landed property and greater tribal influence.

(3) Case 38 of 1918-19. Sir John Maynard found that qualifications under 5 (a) and 5 (b) were equal and decided the case on the ground that

the appointment of a *Hindu* in a predominantly Muhammadan *zail* was a course to be avoided if possible and distinguished P. R. 1 of 1913.

(4) Case 37 of 1920-21. Sir Patrick Fagan upheld the Commissioner's order without giving specific reasons or referring to P.R. 1 of 1913. The Commissioner's decision was based chiefly on the grounds (a) that both *zaildar* and *sufedposh* should not be of same the tribe and (b) that appellant's services were superior.

(5) Case 62 of 1921-22. Mr. King while of firming the general principle of supporting the Collector's decision reversed it because (a) it was impolitic to pass over certain War Services and (b) the *sufedposh* should normally be appointed.

(6) Case 3 of 1922-23, Mr. King. The candidate passed over by the Collector had been *inamdar* for ten years.

(7) Case 8 of 1922-23. Mr. King while referring to the rulings reversed the Collector's order passing over a man who had officiated for three years as *zaildar* and observed, "I hold that the Commissioner in accepting the arguments in favour of S. M. has given convincing reasons for disagreeing with the order of the Collector. The Commissioner's order, therefore, falls within the cited ruling".

(8) Case 16 of 1924-25, Mr. Stow. The candidate passed over by the Collector had acted for two years and was probably his predecessor's choice for the post when it fell permanent.

(9) Case 7 of 1924-25, *Ghulam Rasul v. Khushal Chand* (1). The Collector had passed over the *sufedposh*.

Of these cases the first presents no difficulty. There was a serious disqualification attaching to the Collector's choice. Cases (3) and (4) present some difficulties as neither principle enunciated is supported by the Land Revenue Rule. The remaining six have a common feature namely, that the Collector's order was reversed, when he passed over a man who had rendered personal services either as officiating in the appointment to be filled or as *inamdar* or *sufedposh* in the *zail*. I am, therefore, arrived at a position when I can reaffirm the position taken by my predecessors, namely, that normally the Collector's choice in appointing a *zaildar* or *sufedposh* should not be interfered with even though the appellate authority thinks that his choice is not the best. I am further able to reinforce this view by saying that apart from any question of positive disqualification attaching to the candidate chosen by the Collector, or legal defect in his order, there is besides two unsupported cases, no recent authority for reversing his decision except on the ground that a rival has shown approved service as acting in the appointment to be filled or if the appointment is a *zaildar* as *inamdar* or *sufedposh*.

It remains to decide to what extent service as *inamdar* justifies overruling the Collector. I have shown that such service has been the *ratio decidendi* in overruling the Collector, in the cases (62 of 1921-22, 3 and 7 of 1924-25, (1). On the other hand in none of these cases was this the sole ground and in 15 of 1926-27 Mr. King to avoid overruling the Collector accepted the appeal and reversed the Commissioner's order appointing the *sufedposh* as *zaildar*, and on the revision side I find the Financial Commissioner's repeatedly refusing to interfere in favour of a *sufedposh* who has been passed over. Sir John Maynard did so in case 236 of 1918-19 without reference to claims as *sufedposh*: Mr. Tollinton similarly in case 227 of 1921-24 (where he said that ordinarily the *sufedposh* should have been appointed but the disparity was too great); in case 67 of 1925-26 (where he said that ordinarily there is something to be said for promoting a *sufedposh* but the claims of the respondent were much better) and in case 199 of 1925-26 where he says, "The Financial Commissioner's ruling that other things being equal a *sufedposh* should ordinarily be promoted to a vacancy in the *zaildari* of his *zail* is not to be interpreted as meaning more than is here expressed". Indeed I can find not a single case in which the Financial Commissioner has set aside a concurrent finding of the Commissioner and Collector passing over a *sufedposh*, and Mr. King since he last applied the principle in 7 of 1924-25 (1) departed from it four times. I, therefore, cannot find in the position of the *sufedposh* anything on which to base a principle opposed to that which deprecates reversing the Collector's decision. All that appears is that good service as a *sufedposh* is to be given great weight in considering personal services and that the *sufedposh* should be appointed when other things are equal or nearly equal and this is a principle subject to the general rule that the Collector's decision ought not to be upset. That is to say the Collector's decision passing over a *sufedposh* will not be upset unless there is such an approach to equality between the rivals in other matters as makes it clear that he has failed to give proper weight to this very important consideration.

In the case before me the Collector has preferred the rival on the following grounds:—

(a) Tribal influence. The rival is a *Hindu Taga* and the *sufedposh* a *Mohammadan Taga*, and there are 12 villages of *Hindu Tagas* and 5 of *Mohammadan* and past Collectors have said that the *Zaildar* should, if possible, be a *Hindu Taga*. But as the Commissioner points out 5 villages represent a strong minority. And there is another point not generally noticed. The rule says nothing about religion, but mentions tribe only. That is why I am inclined to doubt Sir John Maynard's ruling in case 331 of 1918-19 quoted above as imparting a *ratio decidendi* not in the rule. And *qua Taga*, the *Mohammadan* is as representative as the *Hindu*.

I do not regard this as regrettable omission in the rule. On the contrary, I believe that there is between members of the same tribe, whether Hindu or Mohammadan, when they are let alone by outside propagandists, a definite solidarity which the rule rightly recognises, and which we should beware of weakening by importing religious distinctions.

(b) From the point of view of possession of land the *sufedposh* is much inferior although the Commissioner suggests he is in possession of a considerable area of undivided waste.

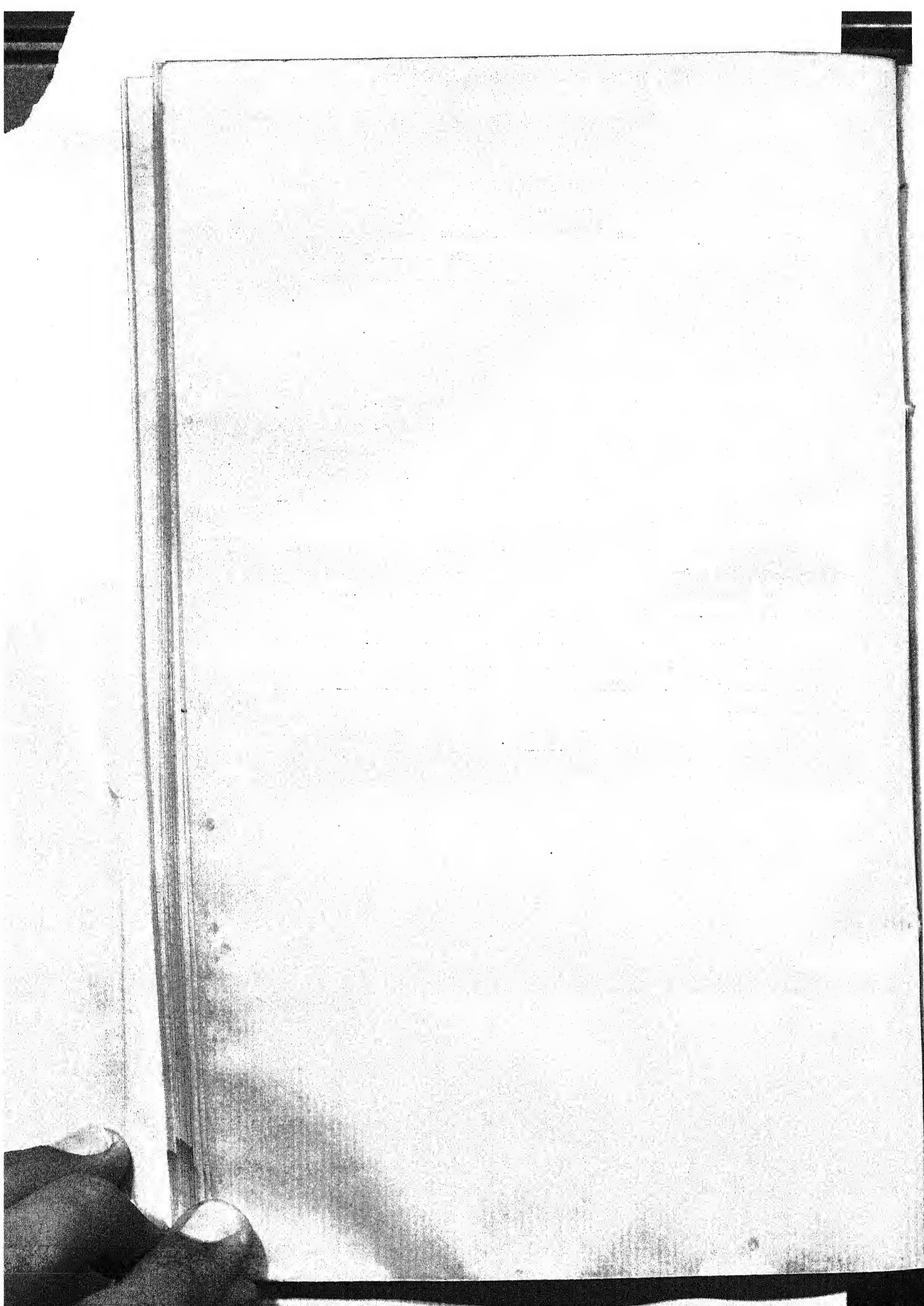
(c) From the point of view of family influence the rival is the superior as the *zaildari* has been in his family for three generations. But we must be careful not to let them become a hereditary claim.

(d) From the point of view of personal services the *sufedposh* has the services of his 10 years of office which are recognised as good. The rival who is only 27 has none.

On the whole I find that the Collector's main reason for passing over the *sufedposh*, the religious one has broken down, and that there is otherwise no such disparity in the favour of the rival as justifies passing over the *sufedposh*. I, therefore, reject the appeal.

I have not called on counsel. It is very desirable that Appellate Courts in *zaildari* cases should, before so doing, apply their mind to the case, and, if they feel no doubt in this matter, save the parties the burden of legal expenses.

Appeal rejected.



CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1929.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 27 of 1928-29. (Decided on 5-1-1929.)

Craik, F. C.

NURA and another

Appellants

Versus

Mst. BAKHO

Respondent.

**Punjab Colonization of Government Lands Act (V of 1912)
as amended by Act (III of 1920), S. 7—order based on equity
and justice—no interference on revision.**

Held, where the lower Appellate Court has decided a point in accordance with law and equity, the mere fact that it has committed a technical mistake in matters of procedure is no ground for interference.

Appeal against the order of Commissioner, Multan Division.

ORDER.

It is not disputed in the grounds of appeal that Mst. Bakho is entitled to be considered as a female tenant to whom the tenancy has been first allotted, within the meaning of Section 21 (a) of Act V of 1912. Nor is it disputed that Mst. Bakho gave birth to a son on the 24th of March, 1927. The memo of appeal merely takes the technical ground that if the Commissioner held that Mst. Bakho's son was entitled to succeed, he should not have passed an order to that effect himself, but should have remanded the case to the Collector in order that the Collector should pass the order. I do not consider that there is any force in this point. The Commissioner has by his order of the 6th of September, 1928, decided the dispute according to law and equity, and I decline to interfere with his order.

This appeal is accordingly rejected.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 61 of 1928-29. (Decided on 5-1-1929).

Craik, F. C.

MUSSAMAT MAN KAUR

*Applicant**Versus*

HARNAM SINGH

Other side.

**Punjab Colonization of Land Act—horse-breeding tenancy—
rule as to succession—conditional upon making provision for widow—
power discretionary—if can be exercised 14 years after.**

The general rule regarding the succession to horse-breeding tenancy is that it shall devolve as an impartible holding upon a single person. The Deputy Commissioner has discretion to make the succession conditional upon the person selected undertaking to make suitable provision for the widow of the last holder. This power is discretionary and should not be exercised 14 years after the succession has been approved.

Revision from the order of the Commissioner of Rawalpindi Division.

ORDER.

I consider that the Commissioner took the right view in his order of the 19th of September, 1928, in which he was not prepared to reconsider the decision arrived at 13 or 14 years ago. The general rule, regarding the succession to a horse-breeding tenancy, is stated in paragraph 2 (a) of the first Schedule of the statement of conditions. It is to the effect that every tenancy shall devolve as an impartible holding, and upon a single person. Paragraph 4 of the same schedule gives the Deputy Commissioner discretion to make the succession conditional upon the person selected undertaking to make suitable provision for the widow, etc. of the last holder. But it will be observed that the power to direct the payment of maintenance is entirely discretionary; and it is not, in my opinion, reasonable to ask that this power should be exercised 14 years after the succession has been approved.

There is no proof that the applicant, Mussammat Man Kaur, has ever received maintenance in any form out of the proceeds of this tenancy, nor is there any proof that she is wholly dependent upon the respondent. Revenue Appeal, No. 23 of 1919-20, referred to in ground No. 5 of the application for revision, is not, in my opinion, in point.

For these reasons I reject the application.

Applicant to be informed.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 89 of the 1927-28 (Decided on 9-1-1929).

Townsend, F. C.

NAZIR AHMAD

*Applicant**Versus*

JALAL

*Other side.***Lambardar—appointment of—father acquitted on appeal—absconding of candidate's uncle.**

Held, that the mere fact that the candidate's uncle had absconded or that his father was acquitted on appeal in a criminal case against him does not show any obliquity as to debar him from being appointed as Lambardar, regard being had to the hereditary principles.

Petition for revision from the order of the Commissioner of Rawalpindi.

ORDER.

In this order I dispose of three applications for revision filed by Nazir Ahmad, Jahana and Shahana. Jahana and Shahana do not press their applications, if Nazir Ahmad is appointed. I have heard counsel for each side. I dislike interfering in revision, especially when the Collector and Commissioner are in agreement, but I find that my predecessor, Mr. King, did so in a precisely similar case. It is admitted that Nazir Ahmad is the nephew of Mirza who absconded and then died. I cannot find that this fact shows any such obliquity as to debar his nephew from the appointment of Lambardar. I also find that Sardara, Nazir Ahmad's father, has been acquitted by the Sessions Judge in the criminal case against him. I do not, therefore, think that we have sufficient reason to disregard the rules in this case, and I reverse the order of the Collector and Commissioner and appoint Nazir Ahmad as Lambardar in succession to his uncle Mirza. During his minority, the Collector can appoint whom he will within the rules, as his *Sarbarah*, but I do not think, it is desirable that *Sarbarah* should be so appointed. He was only given the benefit of doubt in the criminal case referred to.

Parties may pay their own costs.

*Revision accepted.*IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 63 of 1927-28 (Decided on 9-1-1929.)

Townsend, F.C.

LAJJA RAM

*Applicant**Versus*

GHANSHAM

Other side.

Lambardar—succession—right of brother—estate ceasing to be of Government—succession to lambardari—rules governing.

Where the estate ceased to be a Government estate, the ordinary rules regarding appointment of Lambardars apply, and the elder brother of the deceased Lambardar should be appointed in succession to him.

Revision from the order of the Commissioner of Ambala.

ORDER.

I have heard Counsel for both parties. A mistake was made both by Collector and Commissioner in this case. They both overlooked the fact that since 1910 this estate ceased to be a Government estate: since that year the ordinary rules regarding appointment of lambardars apply. This being so, the matter is clear. There is no reason, as is shown by an examination of the papers, why Lajja Ram, the applicant and elder brother of the deceased Lambardar, Fateh Singh, should not be appointed Lambardar in succession to him. Respondent belongs to an entirely different family, [I accept the application and, reversing the orders of the collector and Commissioner, appoint Lajja Ram Lambardar in place of Fateh Singh deceased.

Application accepted.

**IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.**

Revision Side

Revenue.

No. 102 of 1927-28.-(Decided on 11-1-1929).

C. A. H. Townsend, F. C.

VIR BHAN

Applicant

Versus

LAKHMI DATT and others

Other side.

Punjab Land Revenue Act, S. 37—mutation—gift of land—question of validity of gift—Revenue Officer not concerned.

When a person gifted his share in the land to some one else, but when it came to mutation proceedings, the Tahsildar declined to attest the proceeding. Held, that whether the gift is valid or not according to Hindu Law, is a question for the Civil Courts and that the Revenue Officers in deciding mutation have no concern with such considerations.

Case forwarded by the Commissioner of Lahore to the Financial Commissioner.

ORDER.

Parties heard by pleader at length. For the reasons given by the Commissioner, Lahore, in his order, dated February 4, 1928, I accept the application for revision, and order that the mutation be attested. *Prima facie* there is no objection whatever to this being done: it is straightforward change in an entry in the ownership column of a *jamabandi*. Counsel for the respondents urged upon me that on account of the requirements of Hindu Law, and similar conditions, the mutation should be refused. With such considerations, Revenue Officers, in deciding mutations,

have no concern. Should respondents so decide, they are, of course, at liberty to bring a civil case to set aside the whole transaction.

Application accepted.

The order of the Commissioner referred to above ran as follows:—

Vir Bhan succeeded to a one-fifth share in certain land. In 1880 an arrangement was made by which the whole of this land was to remain in possession of Lalu Lal, who was to pay Rs. 24 per annum to each of his 4 brothers. This arrangement was made under an award, of which no copy is now forthcoming. In 1891 Vir Bhan, the present appellant, brought a suit for possession of his share by partition. The Divisional Judge in his appellate judgment, dated 20th October 1891 noted that "according to the award the land was to remain in possession of Lalu Lal and he was to pay Rs. 24 to each of the other shareholders. The three arbitrators are alive now and have come into Court and have explained this, stating that it was agreed and accepted that the land in dispute should remain in Lalu Lal's possession and plaintiff receive Rs. 24 a year." The Divisional Judge held that Vir Bhan, who had drawn his money regularly for ten years, could not then turn round and seek to upset the award; that is, apparently it was held that no partition could be claimed and that the amount of Rs. 24 per annum for each one-fifth share could not be varied.

Vir Bhan has now gifted his share in the land to some one else, but when it came to mutation proceedings, the Naib-Tahsildar declined to attest the mutation and the Collector upheld his order.

Vir Bhan is still shown as owner of a share in the land. It appears to me that the revenue authorities, in refusing to attest the mutation regarding this share, have assumed that the present revenue records are incorrect, but they have not apparently taken any steps to correct them.

It is urged for respondents that the right to receive Rs. 24 is a personal one, but clearly it arose from the ownership of the share in the land. It is also urged that the property is impartible and that, therefore, the land could not be gifted; but this is supported not by reference to Customary Law, but by reference to arrangements prevailing outside the Punjab.

It appears to me that virtually the Naib-Tahsildar was trying a civil case about this land, but the place for that is Civil Court. I think, the mutation should have been attested. Accordingly, I accept the application and direct that the mutation be made accordingly.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 127 of 1927-28. (Decided on 11-1-1929).

Townsend, F. C.

GOBIND JAS

*Applicant**Versus*

MOTI SINGH

Other side.

**Punjab Land Revenue Act, S. 28—Land Revenue rules 17
(ii) (c)—appointment as Lambardar—hereditary claim.**

Held that proceedings under S. 110, Cr. P. Code, which have ultimately been set aside by the High Court are no bar to appointment of an heir as Lambardar in succession to the deceased Lambardar.

Revision against the order of Commissioner, Lahore Division.

ORDER.

I have heard counsel for parties, who have referred me to various rulings on the subject. I do not think we can now go into the claims of Moti Singh, respondent, that part of rule 4 of the Rules under the old Land Revenue Act, which might have permitted his claim to be now considered, was not repealed in the rules under the Act 1887.

But respondent's Counsel contends that petitioner has no property and is of bad character, quite apart from the proceedings against him under S. 110 C. P. C. which were set aside by the High Court; in brief, that Collector is justified in refusing to appoint him under Rule 17 (ii) C. of the Land Revenue Rules. I should be glad if Collector would go into these points in detail, and report to me if any satisfactory reasons to justify the non-appointment of petitioner as Lambardar exist. The proceedings under S. 110, Criminal Procedure Code, must not be taken into account in this matter, as they have been set aside by the High Court. Report to me by 1-4-1929. I note that I told counsel I would then hear them again.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue,

No. 143 of 1927-28. (Decided on 14-1-1929.)

Townsend, F. C.

GAURDHAN

*Applicant**Versus*

HARI RAM

Other side.

**(i) Punjab Land Revenue Act, S. 16, revision—interference
in—concurrence of Collector and Commissioner—Lambardari.**

Held, that the Financial Commissioner may depart from the usual practice of refusing to interfere in cases of agreement of the Trial and the Appellate Courts on a point, where there has been a flagrant disregard of the rules, *e. g.*, the appointment of Lambardar.

(ii) S. 28—appointment of lambardar—hereditary claims.

Held further that a first cousin of a deceased Lambardar, holding land sufficient to cover *zer-i-barat*, though convicted of a petty offence under the Canals Act, should be preferred to a person related to the deceased four generations back, although owning much more land.

Revision against the order of Commissioner of Ambala.

ORDER.

I dislike interfering in revision cases, especially when, as in this case, Collector and Commissioner are in agreement. But so flagrant has been the disregard of rules in this case, I must do so. It is admitted that appellant is a much closer relation to Pat Ram, the former Lambardar, being his first cousin, than is the respondent, who is only related to him four generations back. There seems nothing against appellant's character save a conviction for a very petty offence under Canal Act, which I disregard to render him unfit to be a Lambardar. Admittedly respondent has more land than appellant: but latter has more than sufficient land to cover *zer-i-barat*.

I accept the application, and, setting aside the order of the Collector and Commissioner, appoint Gaurdhan Lambardar in place of Hari Ram.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 19 of 1923-24. (Decided on 14-4-1929).

C. M. King, F. C.

ALLAH BAKHSH

Appellant

Versus

HAKAM KHAN

Respondent.

Zaildar—appointment of minor—only suitable candidate—meaning of.

Under rule No. 7, a minor can be appointed Zaildar if he is the only suitable candidate. The only suitable candidate does not mean the most suitable candidate.

Appeal from the order of the Commissioner of Rawalpindi.

ORDER.

The facts are given in the orders of the Commissioner and the Collector; and it is not necessary to give them here. The question for decision is whether a minor should be appointed *Zaildar* or not, and this question turns on Rule, No. 7 of the *Zaildari Rules* wherein it is laid down that a minor

can be appointed *Zaildar*, if he is the only suitable candidate. The question, therefore, which is to be asked is whether Allah Bakhsh, one of the appellants, is the only suitable candidate. This is the question, which Commissioner asked of the Collector and to which the Collector has not given a definite reply. Now it would have been impossible for the Collector, in face of the number of candidates who have applied for this appointment, to decide that Allah Bakhsh is the only suitable candidate. I have been asked (practically) by the appellants' counsel to give to this rule a much wider interpretation than it can possibly bear. I am asked practically to translate the words "the only suitable candidate" into the words "the most suitable candidate" and I think that it is impossible to do this. It is doubtless hard that the son of a very loyal man, who has done great services for Government, should be excluded from immediately following his father's foot-steps, but rules are intended to be followed, and I think, it would be wrong to give to Rule 7 any other interpretation than that which, on the face of it, it bears. I, therefore, dismiss the appeal of Allah Bakhsh. The appeals of Nadar Khan, Abdul Rahman Khan, Jahan Khan and Mehdi Khan are also dismissed. The Commissioner has gone into the case very thoroughly; and I see no reason to vary the decision made by him.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 30 of 1928-29. (Decided on 16-1-1929).

Townsend and Craik, F. Cs.

CH. SUBE KHAN

Appellant

Versus

CROWN

Respondent.

Character Roll--adverse entry in--appeal therefrom.

Held that no appeal lies from an adverse entry in a character roll, as it is not the same thing as an official censure from which an appeal lies.

ORDER.

This is an appeal to expunge an entry in a character roll. I have carefully examined the rules bearing on such appeals, and am quite satisfied that no appeal lies. An adverse entry in a character roll is not the same thing as an official censure from which an appeal lies. It is very important that no entry should be made in a character roll without due consideration.

I reject this appeal. As the matter is of administrative importance, I should be glad of my colleague's opinion.

Craik, F. C.—I agree with Mr. Townsend that no appeal to expunge an entry in a character roll can lie.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

No. 22 of 1927-28. (Decided on 16-1-29.)

Revenue.

Townsend, F. C.

GHULAM RABBANI

Appellant

Versus

MAJI

Respondent.

Punjab Tenancy Act, S. 22—decree for enhancement—definite finding as to nature of tenancy—necessity of.

A decree for enhancement of rent cannot be passed under S. 22 without a definite finding as to the section and clause of that Act under which tenants hold occupancy rights.

ORDER.

In this order I dispose of one appeal and one application for revision.

Ghulam Rabbani and others, landlords, brought a case against Muhammad Hafiz and others, occupancy tenants, for enhancement of rent. The trial Court, Pir Haidar Shah, Revenue Assistant of Attock, gave a decree enhancing the rent paid by tenants very considerably, on the basis of a so-called agreement of 1900 entered into between the parties. The Commissioner, on appeal by the tenants, decided that the agreement of 1900 had not been executed: therefore he disregarded it altogether. He, however, gave an enhancement of rent to the landlords considerably less than the amount allowed by the trial Court. I have heard arguments by pleaders for each side in detail to-day. I consider that the Commissioner was entirely right in disregarding the agreement of 1900, but I cannot understand how he increased the rent up to 12 annas per rupee of the land revenue under S. 22 of the Tenancy Act, without a definite finding as to the section and clause of that Act under which the tenants hold occupancy rights. It is admitted by both sides before me that the tenants are occupancy tenants and not *muqarraridars*. Apparently no decision has so far been arrived at as to the section and clause of the Tenancy Act under which the tenants hold occupancy rights. This is of course a vital preliminary point for decision in such cases, as has been frequently pointed out by the Financial Commissioner. Accordingly I remand the case for re-decision on its merits to the Collector of Mianwali, who should try himself at Mianwali. He must entirely disregard the so-called agreement of 1900 which the Commissioner and I agree has not been proved. The only facts to be considered by him are that the tenants are at present paying a cash rent of Rs. 1-2-6 per *kanal*, and that the landlords ask for its enhancement. On these facts he will deal with it as an ordinary case for enhancement of rent governed by the provisions of S. 22 of the Tenancy Act. With reference to the wording of clause 22 (1) (c), I note that the rent is not regulated by contract. Obviously the first thing which the Collector of Mianwali has to decide is under

which section of the Tenancy Act the tenants hold their occupancy rights. He will then proceed with the case on its merits having due regard to the instructions contained in the Land Administration Manual, Standing Orders and the like.

Finally, as there has been a good deal of litigation and there is much feeling between the parties, I order that each party shall pay his own costs throughout. The Collector of Mianwali can pass any order he likes as to the cost in his Court, and any order he passes will of course be appealable under the ordinary law.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 74 of 1927-28. (Decided on 16-1-1929.)

Townsend, F. C.

SHEO LAL

(Plaintiff)-Applicant

Versus

BHOJ RAJ

(Defendant) Other side.

Punjab Tenancy Act, S. 84—rights of occupancy—wrong decision of Collector—revisional powers of Financial Commissioner.

The Financial Commissioner's revisional powers under the Tenancy Act are smaller than those he possesses under the Land Revenue Act. But where there is flagrant injustice in the lower Court's orders, the revisional powers of the Financial Commissioner should be exercised to remedy the material irregularity.

Case forwarded by the Commissioner of Lahore.

ORDER.

For the reasons given by the Commissioner (I have also been into the facts fully) I accept his recommendation for revision, and cancelling the orders of the Assistant Collector and Collector give Sheo Lal, plaintiff-tenant, occupancy rights under S. 5 (c) of the Tenancy Act, in the land in suit and cancel the notice of ejectment issued against him in respect of it. It is of course the case that the Financial Commissioner's revisional powers under the Tenancy Act are smaller than those he possesses under the Land Revenue Act. But so flagrant, in my opinion, would the injustice be in the present case if the orders of the lower Courts were allowed to stand. I regard the case as one of "material irregularity" in that they disregarded entirely the point on which Commissioner sent the case to me for revision, and considered that I should interfere.

Application for revision accepted.

Revision accepted.

The order of the Commissioner referred to above ran as follows:-

In this case Sheo Lal applicant sued in the first Court for the cancellation of a notice of ejectment in respect of certain land whereof he is in occupation as a tenant under Bhoj Raj, respondent in this Court, who is recorded as the landlord thereof. In his plaint Sheo Lal urged that he had occupancy rights in the land in question under S. 5 (1) (c) of the Tenancy Act on the ground that he had been settled in the village by the founder thereof as a cultivator therein and that his ancestor occupied the land on the 21st day of October 1888. The defendant landlord denied these allegations and ultimately the case was decided by the first Court on the following among other issues.

1. Whether plaintiff or his ancestor settled in the village along with or was settled by the founder thereof as a cultivator therein?

2. Whether the first issue is *res judicata* between the parties under S. 11 of the Civil Procedure Code?

On the second issue the lower Court decided that the first issue was not *res judicata* between the parties because in the former suit between the parties No. 45 of 1913 decided on 20th August, 1914 by Sheikh Din Muhammadi, on which plaintiff relied, the land in question was not the same although it was situated in the same village. The Court found the first issue against plaintiff on the merits and dismissed the suit.

Against this order plaintiff appealed to the Collector of Hissar who confirmed the order of the lower Court on the ground that the issue framed in the previous suit "did not specifically go into the main allegation whether Sheo Lal's ancestor settled with the founder." Now in the suit of 1914 the only issue framed was; "Is plaintiff entitled to rights of occupancy in the land in suit under S. 5 (1) (c) of Act XVI of 1887?" It is obvious that this general issue clearly includes the issue whether the plaintiff or his ancestor settled in this particular village "Bhattu Khurd" along with or was settled by the founder thereof as a cultivator therein. In this connection the Collector appears to have overlooked explanation (iv) of S. 11 of Civil Procedure Code.

The decision of 1914 has clearly settled this issue in the tenant's favour as regards the village of Bhattu Khurd between the two parties and it cannot be raised again. As the other elements necessary for constituting an occupancy tenancy under S. 5 (1) (c) of the Act have been found by both the lower Courts to be present applicant-tenant is, in my view, entitled to occupancy rights under S. 5 (1) (c) in the land in suit.

The case is accordingly submitted for the orders of the Hon'ble Financial Commissioner, Punjab, under S. 84 (3) of the Punjab Tenancy Act.

The parties wish to be heard before final orders are passed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 40 of 1927-28. (Decided on 16-1-1929).

Townsend, F. C.

KHAN DOST MUHAMMAD KHAN

Appellant

Versus

JIWAN and others

Respondents.

Punjab Land Revenue Act, S. 37 (b)—Civil decree—binding nature of.

Held, that in making entries in a *Wajib-ul-arz* effect should be given to the decree of a Civil Court which decides all the matters between the several parties.

Appeal against the order of the Commissioner, Rawalpindi Division.

ORDER.

I have heard counsel for each side. I consider the Commissioner's order is entirely correct: it merely gives effect to the order of the Civil Court, between practically all the *adna* and *ala maliks* of the village, dated 31-7-1920. And that order practically decided the amount of *Jhuri* payable by *adna maliks* when land emerges again after submersion by the river. To this point the appellant practically objects: without reason I consider in view of the finding on the matter of the Civil Court. So I dismiss this appeal. I note, however, that the *Wajib-ul-arz* entry of 1907 will only be changed to give effect to the Commissioner's order, so far as *adna maliks* who obtained proprietary rights on payment of *jhuri* are concerned: as regards those *adna maliks* who have obtained proprietary rights without payment of *jhuri*—they are apparently very few in number—the entry of the 1907-08 settlement should be retained: with them the Civil Court did not deal: and we cannot, therefore, so far as they are concerned, change the existing order. As the case is important and the settlement staff has now left the district I direct that the *Wajib-ul-arz* entry in question of this village should be now made in accordance with the Commissioner's order of 26-1-1928 read with this order of mine, by the Deputy Commissioner of Mianwali personally or under his personal supervision. The work should not be entrusted to any other member of the revenue staff of the district as the Revenue Assistant or the Tahsildar.

Parties may pay their own costs.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 50 of 1927-28, (Decided on 19-1-1929).

Townsend, F.C.

GHULAM MUSTAFA

*Appellant**Versus*

BASANT SINGH

*Respondent.***Sufedposh—appointment of.**

In appointing a person Sufedposh, there is no provision for conditional sanction under rule 4. If a sanction is given it should be absolute.

Once, however, a candidature has been sanctioned by a Commissioner, the claims of all candidates, whether lambardars or not, should be considered alike.

ORDER.

The Collector of Jullundur appointed Ghulam Mustafa Sufedposh in place of his father, deceased. Ghulam Mustafa was not a Lambardar but the Collector says in his order that sanction had been given to his candidature by the Commissioner. Against Collector's order Basant Singh appealed to the Commissioner, who accepted the appeal on the ground that he had agreed to the candidature of Ghulam Mustafa for the vacant Sufedposhi only if there was no suitable Lambardar candidate. Considering Basant Singh, Lambardar, suitable for the post, Commissioner accepted the appeal and appointed him Sufedposh, *vice* Ghulam Mustafa. The Commissioner did not go into the comparative merits of Ghulam Mustafa and Basant Singh.

2. From that order Ghulam Mustafa appeals to me, and I have to-day heard counsel for each side. I consider that the Commissioner was not right in attaching the condition he did to the sanction of the candidature of Ghulam Mustafa. Such sanction is given under Land Revenue Rule 4, and there is no provision under that Rule for any conditional sanction, nor do I think that any such conditions are desirable. If a sanction is given it should be absolute; if a Commissioner is doubtful in the matter, he has the remedy in his own hands in refusing sanction. Once, however, a candidature has been sanctioned by a Commissioner, the claims of all candidates, whether Lambardars or not, should be considered alike.

On the merits of the present case, I agree with the Collector, having gone into the respective claims of each candidate with care, that Ghulam Mustafa is a stronger candidate. For these reasons I accept the appeal, and cancelling the Commissioner's order restore that of the Collector.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No 57 of 1927-28. (Decided on 24-1-1929.)

Craik, F. C.

MST. BHOLI

*Applicant**Versus*

BACHNA

Respondent.

Tenants under Government - widow's right of purchasing proprietary rights.

The question whether an occupancy tenant is entitled to purchase proprietary rights in the holding is a purely executive and not a judicial one. In passing orders on such a petition, the Deputy Commissioner is acting not as a Revenue Officer or a Revenue Court but as the agent of Government in its capacity of landlord. Therefore in the case of a childless elderly widow it is not the policy of the Government to permit a purchase by her of proprietary rights.

Revision from the order of the Commissioner of Multan Division.

ORDER.

The petition of revision indicates a certain confusion of thought. No question arises at the present stage whether the occupancy rights in this holding are the self-acquired property of the petitioner, Mst. Bholi, or whether she is entitled to alienate those rights. The only question is whether she is to be permitted to purchase proprietary rights in the holding, and whether the Collector was right in refusing to allow her so to purchase. The question is a purely executive and not a judicial one. In passing orders on such a petition the Deputy Commissioner is acting not as a Revenue Court or as a Revenue Officer, but as the agent of Government in its capacity of landlord.

In the present case, the Deputy Commissioner rejected the petition of an elderly widow who has apparently no issue. In doing so, he gave effect to the policy of Government as laid down in letter No. 7863, dated the 25th November, 1915, from the Senior Secretary to the Financial Commissioner to the Commissioner of the Multan Division. I see no reason to interfere, and reject the application.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 41 of 1927-28 (Decided on 31-1-1929).

Townsend, F. C.

CHAUDHRI ATA ILAHI

*Appellant**Versus*

CHAUDHRI FATEH DAD KHAN

Respondent.

Zaildar—qualification of person appointed.

The Zaildar appointed should be a *persona grata* to the people of the Zail.

Zaildari—minor—appointment of.

Held, that a minor may be appointed if no other suitable candidate is available, or the post may be left vacant till the minor comes of age—vide Land Revenue Rule 7, but that the post ought not to be left vacant for a long period, and arrangements for a substitute should ordinarily be made.

Appeal from the order of the Commissioner of Rawalpindi Division.

ORDER.

I heard counsel for all the parties concerned in this case a few days ago. I now write my order. In this order I dispose, not only of Chaudhri Ata Ilahi's appeal, but also of that of Chaudhri Fateh Dad Khan.

The facts are given fully in the careful order of the Collector of Gujrat, dated 17th January, 1928 appointing Chaudhari Ata Ilahi, minor, Zaildar, of the Piroshah Zail in place of his father, Khan Bahadur Chaudhri Muhammad Khan. The Commissioner of Rawalpindi held on appeal, by his order, dated 26th March, 1928, that this order of the Collector could not stand, as Chaudhri Ata Ilahi was not a Lambardar in the Piroshah Zail, though he owns land in the Zail, and is a Lambardar in two other villages in the same Tahsil. He also objected to the appointment of a minor to be Zaildar, and remanded the case for re-decision. Against that order Chaudhri Ata Ilahi and Chaudhri Fateh Dad Khan appeal. I am in agreement with the Commissioner that Collector misunderstood the meaning of Land Revenue Rule 4. But I do not agree with the rest of his order. In such cases it is very important that the Zaildar appointed should, so far as we can see, be a *persona grata* to the people of the Zail and no less than 44 of the 49 candidates for the post said they only pressed their claims if Chaudhri Ata Ilahi was not appointed Zaildar, of these 44, 42 were Lambardars. This is a very significant expression of public opinion.

I consider that Chaudhri Ata Ilahi's guardian would certainly have asked that the Collector should apply for Commissioner's sanction to Chaudhri Ata Ilahi's being considered as a candidate for this post, had he been aware that Commissioner would differ from Collector's interpretation of Land Revenue Rule 4. So I consider that I am justified in now sanctioning the candidature of Chaudhri Ata Ilahi, and hereby do so. This clears the way. Remains the question of minority. Land Revenue Rule 7 lays down, *inter alia*, that a minor may be appointed if no other suitable candidate is available, or the post may be left vacant till the minor comes of age. I do not consider this course desirable in this case, as its adoption would mean that the Zaildari would be vacant for 16 years, as Chaudhri Ata Ilahi is only 2 years old now.

But, after carefully examining the case I consider that Chaudhri Ata Ilahi is the only suitable candidate. As the Collector says, the only other candidates who need be considered are Sultan Mulk and Fateh Dad Khan.

The former though of age, has done but little : there is nothing to show that he has the least personal influence in the Zail. Fateh Dad Khan is a Muharrir in the District establishment ; on long leave. He is Sufedposh, but as Collector points out only a poor creature. I have been through his record. It is very ordinary though he devoted himself to collecting chits from the Military Officers during the recent manoeuvres in the area : in the hope, of course, that they would help him in this case. But had I been dealing with this case as Collector, I should have held that there was no suitable candidate for the post save Chaudhri Ata Ilahi, so poor in my opinion, are the records, regarded as a whole, of Sultan Mulk and Fateh Dad Khan. So I hold that there is nothing in Land Revenue Rule 7 to prevent the appointment of Chaudhri Ata Ilahi.

I have no doubt that his appointment is desirable. Accordingly I reverse the Commissioner's order, dated 26th March, 1928, and restore the order of the Collector, dated 26th January, 1928. Chaudhri Ata Ilahi is appointed Zaildar but his appointment will be on probation for one year.

During the minority of Chaudhri Ata Ilahi, Collector will make suitable arrangements for a substitute to discharge his duties as Zaildar.

Parties may pay their own costs throughout. This appeal of Chaudhri Ata Ilahi is accepted ; that of Chaudhri Fateh Dad Khan is dismissed.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 2 of 1928-29. (Decided on 26-2-1929.)

Craik, F. C.

IMAM BAKHSI

Applicant

Versus

WALI MUHAMMAD and others

Respondents.

Punjab Land Revenue Act, S. 37—duty of Mutation Officer—sale—vendee in possession—if bound to go into facts—purchase of land—consideration—discharge of vendor's debt—if offends against the Land Alienation Act.

When the vendee is in possession of the land, the Mutation Officer is not bound to go into the validity of the transaction. He is merely bound to pass an order in accordance with the ascertained facts, as to possession as established before himself. One W bought land from another and agreed to discharge the latter's debt. Held, that the transaction did not offend against the provisions of the Alienation of Land Act and there was nothing to prevent a non-agriculturist obtaining satisfaction of his debt by means of such a transaction.

Case forwarded by the Commissioner of Multan Division.

ORDER.

As has been pointed out by the Commissioner in his order of reference of the 3rd of November, 1928, the transaction is a somewhat suspicious one. But nevertheless I consider that the Collector took the right view in his order of November the 27th, 1927. It appears to me that what happened was that Wali Muhammad bought the land from Imam Bakhsh and agreed to discharge the latter's debt to Isar Mal. This transaction did not itself offend against the provisions of the Alienation of Land Act. There is nothing to prevent a non-agriculturist creditor obtaining satisfaction of his debt by means of such a transaction, and it is a relevant fact that at no stage of the case was the objection put forward on behalf of the vendor that the sale was in actual fact to Isar Mal and not to Wali Mohammad.

As regards the area sold, the document of the 21st of July, 1927, definitely states that the area sold was 218 kanals which is equivalent to 54 bighas. As has been pointed out by Counsel for Wali Mohammad, the onus is heavily on the vendor to show that this receipt, which was signed by him, was not a correct statement of the transaction.

As regards possession, the Naib-Tahsildar's order of the 10th of July, states definitely that the vendee is in possession of the land. In the circumstances, the mutation officer was not bound to go into the validity of the transaction. He was merely bound to pass an order in accordance with the ascertained facts as to possession as established before himself.

On behalf of the vendor it has been urged by his brother, who is present in Court, that the whole of the consideration has not passed and that a sum of Rs. 200 in cash is still due to the vendor. This was the plea put forward before the Naib-Tahsildar by the vendor on the 4th of September, 1927, but I consider that the Naib-Tahsildar was correct in accepting the receipt of the 21st of July, 1927, which admitted the receipt of the whole consideration of Rs. 2,800.

I accordingly decline to reverse the order of the Collector dated November, the 25th, rejecting the appeal. The consequence is that the Naib-Tahsildar's mutation order of the 4th of September, 1927, will stand.

Announced - Imam Bakhsh will pay the costs of this reference. Counsel's fee Rs. 32.

Revision rejected.

Order of the Commissioner referred to above was as follows :-

Jan Mohammad *Patwari* entered a report, on 26th June, 1927, in his *roznamcha* to the following effect: -

"Imam Bakhsh, son of Piran, caste Wad, Khewatdar of Tibbi Waddan, stated to-day, in the presence of Qadir Bakhsh Lambarder and Budhu Mal, that he has sold 1/36th of the land of khata No. 61 and 1/4 of khata

No. 76, without the share of shamilat, to Wali Muhammad, son of Hayat, caste Wighmal, for Rs. 2,800, as detailed below, and given over possession:—

"Adjusted Rs. 2,600 in *bahi* account. Cash received Rs. 200."

This report bears the thumb impression of Imam Bakhsh vendor and Wali Muhammad vendee and is witnessed by Qadir Bakhsh and Budhu Mal. The figures "1/4" of khata No. 76 and "2,800" are the corrected figures and were initialled by the Patwari in red ink. Mutation No. 151 was entered by the Patwari on 1st July 1927, but the share of khata No. 76 entered therein is 1/2 instead of 1/4, although the former figure, i. e., 1/2 in column 15 of the mutation sheet had been corrected to 1/4 but not attested. The Naib-Tahsildar, before whom the mutation was placed on 10th July 1927 for orders, noted as under:—

"Imam Bakhsh, vendor and Wali Muhammad, vendee identified by Qadir Bakhsh Lambardar, are present, Rs. 200 is still payable; the vendor has received Rs. 2,600. One month may be given, the case will be decided after one month. The vendee is in possession of the land."

Another report, dated the 31st August 1927, was entered by the Patwari in his *roznamcha* as under. It was witnessed by Qadir Bakhsh Lambardar and Isar Mal Giddar.

"To-day Wali Muhammad, son of Hayat, caste Wagha Mal, resident of Wagha, has produced another acknowledgment stating that 1-36th of khata No. 61 and 1/4 of khata No. 76 was sold to him for Rs. 2,800 by Imam Bakhsh, son of Piran, caste Wad, *vide* report No. 223 dated 26th June, 1927. 2 1/2 instead of khata No. 76 has been sold without any increase in the amount of consideration. 1/2 of khata No. 76 has been sold under a mutual agreement. Correction may be made in the mutation sheet accordingly; 1/4 of khata No. 76 was wrongly entered before. Report written in the presence of Mehta, Isar Mal Giddar and Qadir Bakhsh, Lambardar, Tibbi Waddan."

The mutation was sanctioned by the Naib-Tahsildar on 4th September, 1927, who remarked in the order, *inter alia*, as under:—

"Imam Bakhsh denies to have received payment of Rs. 200. Wali Muhammad vendee has produced a receipt for Rs. 2,800 which should be placed on the file."

The receipt for Rs. 2,800 referred to above, is dated the 6th of Sawan 1984, corresponding to 21st July, 1927, in which Imam Bakhsh is shown to have sold 218 kanals of land of Berinwali for Rs. 2,800 to Wali Muhammad. It is also given in the receipt that the money has been made *manaut* (payable) to Isar Mal Giddar."

Imam Bakhsh's appeal from the Naib-Tahsildar's order was rejected by the Colonization Officer, Nili-Bar, on 25th November, 1927.

This is an application of Imam Bakhsh for the revision of that order.

It is contended that the actual vendee is Isar Mal Giddar and, as such, the sale is against the provisions of the Punjab Alienation of Land Act. That the sale was in reality of 27 bighas (100 kanals), but that of 54 bighas was sanctioned through Isar Mal's machinations. That Wali Muhammad has never been in possession of the land. There is much in what is stated by applicant.

There was no sale-deed. The alteration from $\frac{1}{4}$ to $\frac{1}{2}$ was made under extremely suspicious circumstances, almost amounting to bold tampering with of revenue records. The Patwari's explanation is not at all satisfactory or convincing. Again the change from "Rs. 2,600 adjusted in bahi accounts and Rs. 200 paid in cash 'to' Rs. 2,800 made *manaut* to Isar Mal Giddar" is inexplicable.

The report dated 31st August 1927, was entered in the Patwari's *roznamcha* in the absence of Imam Bakhsh, but in presence of Isar Mal Giddar. There is nothing to show that the alteration from $\frac{1}{4}$ to $\frac{1}{2}$ was ever brought to the notice of the Naib-Tahsildar, or that Imam Bakhsh was ever informed of it. Imam Bakhsh's application dated 25th August, 1927, will repay perusal.

There appears to have been a conspiracy between Isar Mal Giddar, Wali Muhammad so-called vendee, and the Patwari, by which this shady transaction was hatched and put through, for the benefit of Isar Mal Giddar, the *benami* vendee who, though personally served, did not choose to appear before me.

On merits, as also because the transaction is a *benami* one, I think, the mutation should have been rejected.

The case is forwarded to the Financial Commissioner, with the recommendation that an order may be passed accepting the revision application and rejecting the mutation. The respondents should be made to pay the applicant's costs throughout.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 159 of 1927-28. (Decided on 4-3-1929).

Townsend, F. C.

MURID HUSSAIN SHAH

Applicant

Versus

JAWALA SAHAI

Respondent.

Punjab Land Revenue Act, S. 117 (1)—scope of—Revenue Officer's power to refuse partition—provisions permissive—not mandatory.

The provisions of S. 117 (1) of the Land Revenue Act empower a Revenue Officer dealing with a partition case in which a question of title is involved, to refuse partition until that question has been determined by a competent Court,

The section is, however, premissive, not mandatory ; and where its application would involve injustice on the "opposite party," it should not be applied. Every such case has to be decided on its merits.

Revision from the order of Commissioner, Rawalpindi Division.

ORDER.

I am asked to revise the order of the Commissioner of Rawalpindi, dated January 13, 1928, in which he dismissed an appeal by Murid Hussain Shah and others from an order of the Collector of Shahpur, dated 20th August 1927, sanctioning the mode of partition of a large area of land in Mauza Hussain Shah, Tahsil and District Shahpur. The case has been pending since 1921, and Murid Hussain Shah and his co-applicants have been doing everything in their power since then to prevent partition.

I am asked to accept the application on the ground that, though partition is being made under a decree of a Civil Court, dated 20th November 1923, to the effect that Jawala Sahai and others, the "opposite party" to Murid Hussain Shah, are legally entitled to ask for partition, an appeal against that order has been filed by applicants in the High Court but not yet decided, and that it is inequitable that a decision should be made in these partition proceedings till that appeal be finally decided.

To this contention I decline to agree. As already said, Murid Hussain Shah and others have adopted every possible device to prevent partition. I decline to help them to postpone it any longer. Should the High Court accept the appeal, the partition proceedings can be cancelled. But they should be now prosecuted by the Collector with the utmost vigour.

I do not of course overlook the provisions of S. 117 (1) of the Land Revenue Act, empowering a Revenue Officer dealing with a partition case in which a question of title is involved, as in this case, to refuse partition until that question has been determined by a competent Court. The section is, however, permissive, not mandatory, and its application in the present case would, I think, involve injustice on the "opposite party." Every such case has to be decided on its merits.

I dismiss this application. Parties may pay their own costs : I make this order with some hesitation, I, at first, thought the applicants should pay respondents' costs : but, after considering all the circumstances of the case, I think it on the whole right that each party should pay his own costs.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side

Revenue.

No. 95 of 1928-29 (Decided on 21-3-1929).

Townsend, F. C.

NANAK CHAND

Applicant

Versus

CROWN

Other side.

**Punjab Excise Act, Ss. 61 (a), 80—offence under S. 61 (a)
—whether compoundable.**

The composition of offences under the Excise Act is governed by S. 80 of the Act and in that section no mention is made of offences under S. 61 (a).

Punjab Excise Act, S. 61—offender, an 'old licensee—previous record, bad—leniency, whether to be shown.

Where the accused was an old licensee and had been detected at least twice before in offences under the Excise Act, held, that he must be presumed to be thoroughly acquainted with all the rules covering licenses and that it was a fit case that his license be forfeited, the stock be confiscated and a fine be imposed.

Case forwarded by the Commissioner of Jullundur Division for the orders of the Financial Commissioner.

ORDER.

This case has been sent to me by the Commissioner of Jullundur under his order dated 16th January, 1929. It relates to offences of one Nanak Chand of Jullundur (who till recently held four licenses) against the Excise Act. The facts are given in the Commissioner's orders, dated 21st November, 1928, 22nd December, 1928 and that of January the 16th, 1929. The Commissioner allowed the offences committed by Nanak Chand under S. 61 (a) of the Act to be compounded on payment of Rs. 500. I feel, however, that that was not legal: the composition of offences under the Excise Act is governed by S. 80 of the Act, and in that section no mention is made of offences under S. 61 (a). Putting aside, however, this point, the present position is that all licences held by the applicant have been cancelled, his stock has been forfeited, and he has been ordered to pay Rs. 500 by way of composition. The criminal case against him has, I understand, been withdrawn. The Commissioner considers the penalties imposed too severe and asks me for revision of his orders.

An examination, however, of the record shows, in my opinion, that the Commissioner takes too lenient a view of the offence. Nanak Chand is an old licensee and must be thoroughly acquainted with all the rules covering licenses. Moreover, he has, as a report of the Deputy Commissioner of Jullundur shows, been detected at least twice before in offences under the Excise Act. If I accept the Commissioner's recommendation *in toto* the result will be that Nanak Chand will only suffer by having his licenses forfeited and stock confiscated. In view of his record I am not prepared to agree that this penalty is sufficient and I decline to interfere, save that I reduce the amount of Rs. 500, which the Commissioner ordered him to pay, to Rs. 250. Application for revision accepted to this extent only. I decline to give Nanak Chand any excise license: I mention the point as his Counsel particularly presses it.

Revision partly accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 25 of 1928-29. (Decided on 21-3-1929).

C. A. H. Townsend, F. C.

CHARANJI LAL and another

Applicants

Versus

DIN MUHAMMAD and others

Other Side.

**Punjab Land Revenue Act, S. 118—partition—patwari should
carry on the work—strict supervision by the Kanungo necessary.**

After sanction of the mode of partition the actual partition should not be entrusted to an assistant *patwari*. The partition should be carried out by a *patwari* of the village and his work must be strictly supervised by the Kanungo of the Circle.

Case forwarded by the Commissioner of Lahore Division.

ORDER.

In this case I dispose of two applications, Nos. 25 and 26 for revision, which have been forwarded to me by the Commissioner of Lahore with his recommendations dated 2nd November, 1928, I have to-day heard counsel for petitioners, and the respondent Din Muhammad mortgagee, in person.

I agree with the Commissioner that the proceedings after sanction of the mode of partition are entirely unsatisfactory. The partition of these two valuable *khatas* should not have been entrusted to an assistant *patwari*. The work should have been done by the *patwari* of the village, the ordinary work of his circle being carried out by an assistant. Apparently also the work of the assistant *patwari*, who did the partition on the spot, was never inspected either by the Tahsildar or Revenue Assistant, although the village is only 2 miles from Gurdaspur. For the reasons given by the Commissioner, I cancel all the proceedings in these cases after sanction of the mode of partition. The partition should be carried out accordingly afresh by the *patwari* of the village and his work must be strictly supervised by the *kanungo* of the circle, and the Tahsildar or Naib-Tahsildar must also go into it on the spot at least twice. I trust the work will now be properly done. I direct the particular attention of the Collector and his Revenue Assistant to this case. The unfortunate petitioners have been put to much trouble and expense for no fault of their own. Application accepted. I pass no order as to costs.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue

No. 194 of 1927-28. (Decided on 30-4-1929).

Townsend, F. C.

RALLA SINGH

Applicant

Versus

WAZIR SINGH

Respondent.

**Lambardar—succession—right of adopted son—presence of
heir entitled under ordinary rule—adopted son, if entitled to succeed—
—Revenue rule 17 (2) a.**

An adopted son is not entitled to succeed to the lambardari held by his adoptive father in the presence of an heir entitled to succeed under the ordinary rule. 2 P.R. 1912 (Rev.) fol. 1 P.R. 1912 (Rev.) distinguished.

Revision from the order of Commissioner, of Jullundar Division.

ORDER.

This is an application for revision of the order of the Collector of Hoshiarpur, dated 27th February 1928, appointing respondent Lambardar in place of Ghanaya resigned. The Commissioner by order, dated 10th April 1928, rejected applicant's appeal against that order. Applicant now comes to me on revision.

The facts are simple: but both Collector and Commissioner in my opinion are wrong. They held that respondent was entitled to succeed Ghanaya as his adopted son, in accordance with *Vura v. Nasir Din* (1). Both overlooked the later *Bhag Singh v. Jaura Singh* (2) in which Sir M. Fenton, after thoroughly going into the case and the previous rulings on the point, held that an adopted son was not entitled to succeed to the Lambardari held by his adoptive father, in the presence of an heir entitled to succeed under the ordinary rule: which is Land Revenue Rule 17 (ii) (a). Such an heir is present in this case, in the applicant Ralla Singh, son of Lehna, his father having been the grandfather of Ghanaya, the late Lambardar. There is nothing against Ralla Singh to prevent his appointment as Lambardar.

I have carefully considered both the judgments of 1912, and find myself in entire agreement with the complete and expansive judgment of Sir M. Fenton. The matter is important, as there is considerable doubt among the Revenue Officers on the matter.

I, therefore, accept the application for revision and appoint Ralla Singh, Lambardar instead of Wazir Singh.

Parties may pay their own costs.

Revision accepted.

(1) 1 P. R. 1912, (Rev.)

(2) 2 P. R. 1912, (Rev.)

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 97 of 1927-28. (Decided on 1-5-1929).

Townsend, F. C.

BISHAN DAS

*Applicant**Versus*

BAWA PERDUMAN SINGH

Other Side.

S. 87—costs follow events—defendants causing unnecessary delay—if liable—'pleader' and, Sardar Sahib—no grounds for exemption.

Where the defendant fought the case hard all the way through, caused unnecessary adjournments in its hearing and the like, the facts that he was a pleader and a Sardar Sahib was held to be entirely irrelevant in awarding costs which should follow the events.

Case forwarded by the Commissioner of Jullundur Division.

ORDER.

The first lower appellate Court, the Collector of Jullundur, wrote, as the Commissioner says, an entirely exiguous and unsatisfactory judgment. And the Commissioner has therefore forwarded the case to me on revision. I could of course send it back to the Collector to write a real judgment, but the case has been pending a very long time, and I dispose of the matter myself.

I can see no satisfactory reason to deprive applicant of his cost in the trial Court. Respondent fought the case hard all the way through, caused unnecessary adjournments in its hearing, and the like. The fact that he is a "pleader and a *Sardar Shahib* and has been attending the trial Court" one of the reasons adduced by the lower court for not making him pay applicant's costs, is, of course, as Commissioner, says, entirely irrelevant. I, therefore, accept the application, and order that respondent pay applicant's cost in the trial Court. Costs in Commissioner's and my Court may be borne by each of the parties.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue

No. 1 of 1928-29. (Decided on 2-5-1929.)

C. A. H. Townsend, F. C.

GURDAS MAL

*Applicant**Versus*

CROWN

Other Side.

**Stamp Act, Sch. I, Art. 22—conveyance and composition deed—
distinction between debtor's whole property to be conveyed.**

Where a deed shows that all the property in it is not conveyed, the deed is a conveyance and not a composition deed under which all the property of the debtor must be conveyed.

Revision from the order of the Collector, Jhelum District.

ORDER.

Applicant has a bad case. From the petition he gave to the Collector, dated 28th September 1927 he appears to have had grave doubts himself that the deed in question was not a deed of composition, referred to in Article 22 of Schedule I of the Stamp Act (as he now contends), but a conveyance referred to in Article 23 of the Schedule, as the Collector held. The doubts were justified. After carefully examining the deed and hearing counsel for each side, I have no hesitation whatever in holding that the Collector rightly held that the deed in question is a deed of conveyance, and not a composition deed. To mention only one point, under a composition deed, all the property of the debtor must be conveyed. A mere perusal of the document shows that all the property was not conveyed in this case. The Collector's order is perfectly right. I reject the application; the deficiency in duty, Rs. 325, should be recovered forthwith from the applicant.

Application rejected.

**IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.**

Revision Side

Revenue.

No. 1 of 1928-29. (Decided on 3-5-1929.)

C. A. H. Townsend, F. C.

TARA SINGH and another

Applicants

Versus

Mst. ISO and others

Respondents.

**Punjab Land Revenue Act, S. 37—mutation—maintenance to
unsuccessful party—duty of Civil Courts.**

It is not the function of Revenue Courts to give maintenance to the unsuccessful party in mutation cases. That is the function of Civil Courts.

Revision from the order of the Commissioner of Lahore Division.

ORDER.

I cannot uphold the Commissioner's order giving Rs. 15 per mensem "maintenance" to Mst. Guro, respondent: even though the applicant's counsel appear to have given some such agreement in the Collector's Court. It is not the function of Revenue Courts to give maintenance to the unsuccessful party in mutation cases: that is the function of Civil Courts.

So I accept the application in so far that I order the expunging from the mutation order of so much of it as orders the payment of the maintenance by applicants to respondent.

Parties may pay their own costs.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 89 of 1927-28. (Decided on 2-4-1929.)

Townsend, F. C.

JAWALA RAM and others

Applicants

Versus

JAMALA

Other side.

Punjab Tenancy Act, S. 84—gross injustice and material irregularity—grounds for revision.

Where there is gross injustice amounting to material irregularity interference on the revisional side is justified.

Revision from the order of the Commissioner of Multan.

ORDER.

This is a revision case, but so gross has been, in my opinion, the injustice done, I regard it as a "material irregularity" justifying my interference on the revisional side.

I have heard Mr. Nanak Chand for the petitioners. The respondent is absent though duly informed. Case *ex parte* against him.

The facts are given in the orders of the lower Courts. It will be seen that Mr. Burton when Commissioner, was very doubtful about this case, and that his successor, Sheikh Asghar Ali, though he upheld the Collector's order, did so, judging from the wording of his order, with considerable doubt.

The only point is on account of the compensation given to the tenant, respondent, on ejectment, partly for the cost of the construction of the "Mida wala" well, partly as a clearing tenant.

But he certainly did not "clear" the land. It is quite obvious that when he got possession of the land in 1910, it was already broken. Further, I cannot see how he can possibly be held entitled to any compensation for the cost of constructing the "Mida wala" well. It had been made many years before 1910. It is very doubtful whether even Mida, to whom the respondent claims, but does not satisfactorily prove, relationship, originally made it. Mida died in 1882 and one Lahna (admittedly no relation) held the land then for 12 or 14 years, or even longer. There is not the least reason, whether in law or equity, to give the respondent, any compen-

sation. Accordingly I accept the application for revision and cancel the decree for Rs. 770 given to the respondent against the applicant.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue

No. 61 of 1927-28. (Decided on 20-5-1929.)

Townsend, F. C.

PIR GHAZANFAR HUSSAIN

Appellant

Versus

MOHAMMAD YASIN KHAN

Respondent.

Lambardar—succession to—dismissed lambardar—hereditary principle—convicted lambardar—grandson, if eligible.

The grandson of a convicted Lambardar should not be appointed in his place as the grandson is soon to be under the influence of the grand-father, in spite of the rule that the hereditary principle and the recognition of tribal sentiments are at the root of the Lambardari system

Appeal from the order of the Commissioner, Ambala Division.

ORDER.

The Collector of Ambala dismissed one Aziz Khan, Rajput Lambardar of Dulyani village, who had been convicted of an offence under S. 411, Indian Penal Code, and sentenced to six months' imprisonment and appointed in his place Pir Ghazanfar Hussain, Qureshi, a Sub-Inspector of Police but a resident of Dulyani, and shortly about to retire.

The Commissioner on appeal reversed the Collector's order, and appointed as Lambardar Muhammad Yasin Khan, grandson of Aziz Khan, the dismissed Lambardar. Muhammad Yasin Khan is a minor: his father is dead.

Against that order Pir Ghazanfar Husain appeals to me: and I have heard counsel at length for each side. After going through the file of the criminal case in which Aziz Khan was convicted, I consider that the Collector was right. In the case in question Aziz Khan showed considerable moral turpitude. He, in collusion with one Karam Illahi, a previous convict, had apparently many articles stolen from the house of another Lambardar, Abdul Aziz. And I cannot agree with the Commissioner that Muhammad Yasin Khan, his grandson, will not be under his influence. In holding this view the Commissioner was apparently largely influenced by the fact that Muhammad Yasin Khan was still at school. But he left school on January 31st, 1928, long before the Commissioner's order appointing him was passed.

It is of course, true, as the Commissioner says, that the hereditary principle, and the recognition of tribal sentiment are at the root of our Lambardari system: and should not be set aside without grave reason. I think, however, that quite sufficient reason is forthcoming in this case to refuse, as did the Collector, to appoint the nearest, or indeed any, heir to the dismissed Lambardar, as is expressly provided by Land Revenue Rule 17 (ii) (b). That the minor grandson would be under his grandfather's influence for some years to come there can be no reasonable doubt. In arriving at this conclusion I have duly taken into account the ruling of my predecessor, Mr. King, Financial Commissioner, in the case *Mohammad Ghafoor v. Balu*. (1). From the tribal point of view, there are, apart from the Lambardari now in question, four other Lambardars in the village, all Rajputs. Yet non-Rajputs own a not inconsiderable amount of land: at present they are not represented among the Lambardars.

I accept this appeal, and cancelling the Commissioner's order, restore the order of the Collector of Ambala, dated February 18th, 1928, appointing Pir Ghazanfar Hussain, appellant, Lambardar: on condition that he forthwith resigns his post as Sub Inspector of Police. This he told me he was quite willing to do. The Collector should decide what, if any, new arrangements will be necessary in the village for the division of revenue payers among the Lambardars for the purposes of Land Revenue Collection and the like.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 185 of 1927-28. (Decided on 26-5-1929.)

Townsend, F. C.

JAI DEV SINGH

Applicant

Versus

CROWN

Respondent.

Stamp Act, Art. 23—construction of.

The Stamp Act must be strictly construed and the benefit of any doubt given to the public under the wording of Art. 23. [Held also, that consideration is essential for a conveyance. 13 Cal. 43 distinguished.]

Revision from the order of the Collector, Lahore District.

ORDER.

This is an application under S. 45 of the Indian Stamp Act, to remit the additional stamp duty (Rs. 1,507) *plus* a penalty of Rs. 500 imposed by the Collector, Lahore, by his order dated 3rd November 1926,

(1) 1926 L. L. T. 22: 1926 P. C. L. 11 (Rev.)

on an indenture, dated 30th March 1926, by which the applicants transferred to a new company, known as Rai Bahadur Boota Singh and Sons, some of the property left by the late Rai Bahadur Boota Singh of Rawalpindi. The Company in question was formed in accordance with his will. The indenture in question mentions no consideration as payable, or paid, to the applicants for the transfer in question.

Both the indenture and the will are before me and I have examined their wording with care. Clause III of the Will, after disposing of minor legacies, directs that the "remaining capital" of the Company "will be divided among my three sons, S. Harnam Singh, S. Jai Dev Singh and S. Atma Singh, and the trustees of S. Hardial Singh equally in the form of shares of the Company." These four gentlemen are all the sons of S. Boota Singh. The applicants in the present case are the executors of his will.

I have been referred to various judgments by Mr. Noad for the Crown, particularly Indian Law Reports XIII Calcutta 43. But none are quite in point. The applicants hold that the indenture in question falls, as a transfer, under Article 62 (e) of the Indian Stamp Act, and, as such, the proper stamp duty on it is Rs. 7-8-0 : as originally paid. The Collector held that Article 23 of the Act applies to it, as a conveyance.

After giving the matter due consideration, I cannot find myself in agreement with the Collector. Under the wording of Article 23 consideration is essential. I cannot find that any consideration passed in this case. This indenture and the will are really part of the same transaction : the indenture was only executed to comply with the instructions in the will.

The Stamp Act must be strictly construed, and the benefit of any doubt given to the public : not indeed that I have any doubt in this case.

I hold that the indenture is a transfer falling under Article 62 (e) of the Stamp Act, and, as such, has been properly stamped. I therefore accept the application, and cancel the Collector's order of 3rd November 1926, ordering the applicants, to pay an additional duty and penalty on it. The document should be admitted to registration.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 37 of 1928-29. (Decided on 6-11-1929.)

Townsend, F. C.

HARNAM SINGH

Applicant

Versus

BHAN SINGH and another

Other Side.

Punjab Land Revenue Act S. 118—mode of partition—possession to be respected.

In making partition Revenue Officer should divide the land in the same proportions according to its classes, and with this limitation the various possessions of the joint-holders should be respected as far as possible, *e. g.*, the portion mortgaged by a co-sharer ought to be retained by him up to the limits of his share.

Punjab Land Revenue Act, S. 113 (b)—in effecting partition so far as possible the land mortgaged should be allotted as a share to the mortgagor.

Where one of the three brothers had mortgaged certain plots out of joint lands, held, that in making a partition, land should be given to each brother in the same proportions according to its classes, *i. e.*, canal irrigated land should be divided into three portions and an equal portion of equal value given to each. Subject to this remark, up to the limits of his share, the portion given to the mortgagor should be that mortgaged by him. 2 P. R. 1918 (Rev.) followed.

Case forwarded by the Commissioner of Lahore Division.

ORDER.

I have heard Mr. Mul Raj, Advocate for Harnam Singh, petitioner, and Bhan Singh and Charan Singh in person. I have also heard Mr. Mazhar Ali, Advocate for Muhammad Hussain, mortgagee. I have heard him under the provisions of S. 113 (b) of the Land Revenue Act, duly bearing in mind Financial Commissioner's finding *Ch. Thakar Das v. Sultan Bakhsh* (1) referred to by Commissioner.

There is agreement between the three brothers, Harnam Singh, Bhan Singh and Charan Singh. But the Revenue Assistant and Collector, were, as Commissioner says, at least obscure in ordering possession to be observed in effecting partition: at present Harnam Singh has a decree of a Civil Court in his favour entitling him to one-third share in the property to be divided. But he has actually as yet no possession of any land.

The mortgagee's counsel asks that *so far as possible* the share given to the mortgagor Charan Singh be that mortgaged. The words *italicised* are important. Finally the Commissioner's remarks *re. No. 170* are not quite accurate. That number falls into two portions, 170/1 and 170/2: the first is entered as the joint property of Harnam Singh and Bhan Singh; the second as the sole property of Charan Singh. Neither of these fields of course are included in the present proceedings, which only relate to property held jointly by all three brothers.

I accept the application for revision, and, cancelling all the previous proceedings, order that the partition should be done *de novo*, under the direct supervision of the Revenue Assistant himself: the *Tahsildar* or the *Naib-Tahsildar* should have nothing whatever to do with it. The Revenue Assistant should visit the village himself. The holding to be divided is that already said, in which all three brothers are entered as holding in equal shares. Land should be given to each brother in the same proportions according to its classes *i. e.* canal irrigated land should be divided

into three portions, and an equal portion of equal value given to each. *Subject to this remark, upto the limits of his share, the land to be given to Charan Singh should be that mortgaged by him to Muhammad Husain.*

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 8 of 1928-29. (Decided on 8-11-1929.)

Townsend, F. C.

SARDARA SALEH and others

Applicants

Versus

MEHRA and others

Other Side.

Punjab Tenancy Act, S.45—suit to establish occupancy rights—claim for compensation—whether entertainable.

Where, in a suit to establish occupancy rights, the tenant asks for compensation for improvements, in the alternative, if he fails to establish occupancy rights, held, that on his failure to establish his case, the question of compensation cannot be taken up at that stage, for no question of his ejectment from any part of the land involved is before the Court. Held, further, that such question can be taken up only when landlord wishes to eject him.

Revision from the order of the Commissioner of Rawalpindi Division.

ORDER.

I decline to interfere having heard Mr. Amar Nath for petitioners. This is an application for revision, not an appeal. I see no reason to differ from any of the conclusions arrived at by the lower Courts. But both omitted any reference in their orders to clause 7 of the plaint, in which plaintiffs asked that if they be not given occupancy rights they be given compensation for improvements, etc. I do not think, however, that this point need be taken up now. No question of ejectment of the tenants from any part of the land involved is now before me. When landlords wish to eject them, the procedure laid down in Section 42, etc, of the Tenancy Act must be followed and, under Section 71 of the Act, the tenants can then apply for compensation.

Application rejected. Parties may pay their own costs.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate.

Revenue.

No. 38 of 1928-29. (Decided on 23-11-1929).

Townsend, F. C.

JAMNA RAM

*Appellant**Versus*

SULAIMAN KHAN

Respondents.

Sufedposhi and Zaildari cases—Collector's orders should be maintained if possible—practice.

Held, that in Sufedposhi and Zaildari cases, the Collector's orders should be, if possible, maintained. Such orders should not be upheld where there is an obvious mistake.

Appeal from the order of the Commissioner of Ambala Division.

ORDER.

I do not think adequate reasons existed in this case for the Commissioner to set aside the Collector's order. It is of course an admitted law that in Sufedposhi and Zaildari cases Collector's orders should be, if possible, maintained. This does not of course imply that where they have made obvious mistakes their orders should be upheld. But in this case there is not much between the candidates. Hindu Jats, of whom appellant is one, are in a considerable majority in the zail: and respondent has, I think, been adequately rewarded by being made a district Durbari.

Accordingly, I accept the appeal, and reversing the Commissioner's order, restore the Collector's order and appoint Jamna Ram, Sufedposh but I order that the latter shall be on probation for one year.

Collector's order varied to that extent.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 94 of 1928-29 (Decided on 25-11-1929.)

Calvert, F. C.

SAHIB SINGH

*Applicant**Versus*

SARDUL SINGH

Other Side.

Lambardar—appointment of—father convicted but acquitted on appeal—whether sufficient cause for passing over son.

Where a lambardar was convicted of forgery and for possession of an unlicensed revolver, but was acquitted on appeal, as there was insufficient evi-

defence, and therefore benefit of doubt was given, held, that nothing was proved against the Lambardar which would justify the passing over of his son.

Revision from the order of the Commissioner of Multan Division.

ORDER.

This is an application from the order of the Commissioner, Multan, dated 13th November 1928, upholding the order of the Collector of Lyallpur, dated 1st September 1928. The Collector dismissed Havela Singh on the ground of a conviction for forgery and for possession of an unlicensed revolver.

He then proceeded to appoint Sardul Singh to the vacant *lambardari* passing over the son of Havela Singh on the ground that he would be under his father's influence.

Havela Singh was acquitted by the Sessions Judge on appeal. The revolver case was never brought to Court. Thus the two grounds on which Havela Singh was dismissed have fallen through. Therefore, it does not appear that there is any taint to convey to the son, Sahib Singh.

Before me the son, Sahib Singh applies for revision of the order of the Commissioner, and that he be appointed *lambardar* in place of his father.

The appeal of Havela Singh against his dismissal was heard after his acquittal.

Counsel for respondent argues that Havela Singh was not honourably acquitted, that he was given the benefit of the doubt. It was not found that he had not forged the Will but that there was not satisfactory legal evidence to prove that the Will was forged. He, therefore, argues that the conduct of Havela Singh was so suspicious that his son should not be appointed. He argues that the mere fact that the evidence was not sufficient for the I. P. C. does not necessarily indicate that it is not sufficient to dismiss a *lambardar* and pass over his son.

It is further argued that a Financial Commissioner on revision should not interfere with orders passed by Revenue Officers who have had the whole facts before them.

I am not here dealing with Havela Singh's dismissal but whether rule 17 (ii) (b) applies and there seems to be little room for doubt that it does not apply in this case.

It is unfortunate that the Commissioner did not refer to the acquittal and it seems more than probable that he was not aware of it.

The facts are that there is nothing proved against Havela Singh which would justify the passing over of his son.

I do not think that suspicion after acquittal is sufficient.

I therefore set aside the orders of the officers below and order that Sahib Singh be appointed *Lambardar* in place of his father dismissed.

It will be for the Collector to pass orders about the *Lambardari* square. Also in regard to the appointment of a *Sarbarah* in case the young man wishes to pursue his studies.

Revision accepted.

LAHORE HIGH COURT.

Appellate

Civil.

No. 838 of 1924. (Decided on 24-1-1929).

Broadway and Harrison, JJ.

CHANAN SINGH and others

Appellants

Versus

MST. SANT KAUR

Respondent.

Punjab Tenancy Act, S. 59 (1) (b)—Succession to occupancy—widow of predeceased son—whether can inherit.

A widow of a predeceased son has no right to inherit to the tenancy, for under S. 59 the sons and the sons alone can inherit the tenancy.

Second appeal from the decree of District Judge, Ferozepore.

Appellants:—by Mr. Fakir Chand.

Respondent:—by S. Man Singh.

JUDGMENT.

Harrison, J.—The plaintiffs, being the sons of Jassa Singh, who died in 1918, brought this suit against the widow of their brother Bhag Singh for a declaration that she was not entitled to inherit the property, which would have gone to her husband had he survived his father. This property is of three kinds: land held as a full proprietor, land held as a mortgagee and land held as an occupancy tenant. The suit was dismissed, the finding being that the widow was entitled by custom to inherit her husband's share, and the appeal was dismissed by the District Judge.

A second appeal has been admitted on one point only, namely whether the collaterals are entitled to succeed to the occupancy tenancy on the ground that the Statute overrides all custom and that under S. 59 of the Punjab Tenancy Act the widow of a predeceased son has no status. This point was urged before the District Judge but, as it had not been raised in the trial Court, while describing it as perfectly sound, he held he could not take cognizance of it at so late a stage. Before us it is contended by Mr. Fakir Chand that it is a pure question of law and that there can be no necessity for taking fresh evidence and that, therefore, he is entitled to raise it even on second appeal and still more so on appeal to the District Judge. He has also contended, but we think he has failed to establish, that he did raise the point in his plaint in the trial Court. There can be no doubt that S. 59 of the Tenancy Act is conclusive on the question of succession to an occupancy tenancy,

and both *Mst. Aisha Bibi v. Aziz-ud-Din* (1) and *Wali Muhammad v. Mariam Bi* (2) make this very clear. In reply Sardar Man Singh states that he might discover, though he has not done so, that there is some evidence which might be admissible under S. 112 of the Tenancy Act. This is not a sufficient reason for not enforcing the clear and imperative provisions of S. 59. Whatever the rights of the widow in the other land, the sons and the sons alone can inherit the tenancy.

We therefore accept the appeal and give the plaintiffs the declaration they seek with regard to the occupancy tenancy alone. Under the circumstances we leave the parties to bear their own costs in this court.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 185 of 1927-28. (Decided on 26-5-1929).

Townsend F. C.

JAI DEV SINGH

Applicant

Versus

CROWN

Other Side.

Stamp Act, Art. 23 and 65—remission of additional stamp and penalty—consideration essential under S. 23—interpretation of the Act—benefit of doubt to be given to the public.

Held, that a transfer to be chargeable to stamp duty under Art. 23 must be a transfer with consideration. 13 Cal. 43 distinguished.

Held, further, that the Stamp Act must be strictly construed and the benefit of any doubt must be given to the public.

Revision from the order of the Collector, Lahore District.

ORDER.

Townsend, F. C.—This is an application under S. 45 of the Indian Stamp Act, to remit the additional stamp duty (Rs. 1507) plus a penalty of Rs. 500 imposed by the Collector, Lahore, by his order dated 3-11-1926, on an indenture dated 30-3-1926, by which the applicants transferred to a new Company, known as R. B. Boota Singh and Sons, some of the property left by the late R. B. Boota Singh of Rawalpindi. The Company in question was formed in accordance with his will. The indenture in question mentions no consideration as payable, or paid, to the applicants for the transfer in question.

Both the indenture and the will are before me, and I have examined their wording with care, Clause III of the will, after disposing of minor

(1) 50 P. R. 1910.

(2) 52 P. R. 1906.

legacies, directs that the "remaining" capital of the Company "will be divided among "my three sons, S. Harnam Singh, S. Jai Dev Singh and S. Atma Singh, and the trustees of S. Hardial Singh equally in the form of shares of the Company." These four gentlemen are all the sons of S. Boota Singh. The applicants in the present case are the executors of his will.

I have been referred to various judgments by Mr. Noad for the Crown, particularly Indian Law Reports XIII Calcutta 43. But none are quite in point. The applicants hold that indenture in question fails as a transfer, under Articles 62 (e) of the Indian Stamp Act, and, as such, the proper stamp duty on it is Rs. 7-8-0 as originally paid. The Collector held that Article 23 of the Act applies to it, as a conveyance.

After giving the matter due consideration, I cannot find myself in agreement with the Collector. Under the wording of Article 23 consideration is essential. I cannot find that any consideration passed in this case. This indenture and the will are really part of the same transaction: the indenture was only essential to comply with instructions in the will.

The Stamp Act must be strictly construed and the benefit of any doubt given to the public: not indeed that I have any doubt in this case.

I hold that the indenture is a transfer falling under Article 62 (e) of the Stamp Act, and as such has been properly stamped. I therefore accept the application, and cancel the Collector's order of 3-11-1926, ordering the applicants to pay an additional duty and penalty on it. The document should be admitted to registration.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 44 of 1928-29. (Decided on 26-2-1929).

Craik, F. C.

MST. BIBI

Applicant

Versus

MST. FATIMA and others

Other Side.

**Punjab Land Revenue Act, S. 37—mutation—alienation
prima facie void—alienee not in possession—duty of Revenue Officer.**

Held, that in cases where an alienee has not got the possession, Revenue Officers should refuse mutation of names based on an alienation that is *prima facie* void until a decree (*i. e.* of a Civil Court) affirming the validity of the ostensible transfer is obtained. 14 P. R. 1901 (Rev.) followed. 5 P. R. 1912 (Rev) distinguished.

Case forwarded by the Commissioner of Multan Division.

ORDER.

The facts of this dispute appear sufficiently from the judgment of the Collector, dated the 9th of July 1928, and the Commissioner's order of the 20th October, 1928.

On behalf of Mst. Bibi counsel has referred to me to the passage as reported in revenue judgment No. 5 of 1914, beginning. "There remains the question whether a mutation of sale should be rejected, if or because the mutation officer considers that the vendor has exercised a power of alienation opposed to the customary law of the alienor." In that passage the principle is laid down that when possession has taken place in pursuance of a contract (which is alleged by the other party to be void as violating the customary law of the parties) the mutation officer should sanction mutation irrespective of customary law considerations, and various reasons are given in support of this principle. In the present case, however, I am not satisfied that actual physical possession of Mst. Fatima's share of the holding has passed to her daughter Mst. Bibi. It is true that in the deed of gift dated the 23rd of July 1927, it is recited that possession has passed in accordance with the terms of that deed but the land was admittedly formerly in the joint possession of the two widows. Mst. Fatima and Mst. Umri, and the three reversioners who are present in Court, deny that actual physical possession of any part of it has passed to Mst. Bibi. As the deed was executed on the 23rd of July 1927, and the application for mutation in accordance with the terms of the deed was rejected by the Naib Tahsildar only three months later, the probability is against physical possession having passed to Mst. Bibi. At any rate, I am not satisfied that possession has passed, and consequently the principle laid down in *Ghulam Muhammed v. Mst. Zewaro* (1) does not apply. The case should be decided in accordance with the well recognized principle laid down in *Momanda v. Farid* (2) and followed in numerous subsequent judgments that Revenue Officers should refuse mutation of names based on an alienation that is *prima facie* void until a decree (*i. e.* of a Civil Court) affirming the validity of the ostensible transfer is obtained.

I accordingly decline to accept the recommendation made by the Commissioner in his order of the 20th of October, 1928, and rule that the order of the Collector dated the 9th of July 1928, rejecting the appeal of Mst. Bibi, shall stand. The Naib Tahsildar's order of the 27 October 1927, refusing mutation will, therefore, remain valid.

Announced to the parties. Costs of proceedings in this Court will be borne by Mst. Bibi.

Order accordingly.

(1) 5 P. R. 1912 (Rev)

(2) 14 P. R. 1901 (Rev.)

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 5 of 1928-29. (Decided on 27-3-1929).

Craik, F. C.

JHANDA

*Petitioner**Versus*

BAHAWAL

Other Side.

**Lambardar—dismissal of—statements made before the police
and the magistrate—discrepancy—no sufficient cause.**

The statement of a Lambardar as recorded by the police under S. 161 Cr. P. C. did not agree with his statement in court, but he was not aware of the record made of his statement to the police by the Head Constable and his evidence before the court was believed by the latter. Held, that under such circumstances, it was unfair to dismiss him from his Lambardari.

Application for review, from the order of the Financial Commissioner.

ORDER.

Jhanda has applied for review of my order of the 20th of November, 1928, on the ground that that order, which accepted an appeal against his appointment as Lambardar, was passed without giving him an opportunity of stating his case.

There is force in this contention and I accordingly set aside on review, my order of the 20th of November, and proceed to consider the case *de novo*.

Jhanda was dismissed from the Lambardari by the Collector's order of the 7th October, 1927, on the ground that, in connection with the prosecution of one Allah Bakhsh, Jhanda signed a 'Fard Baramadgi' regarding the recovery of a 'Chhavi' from the house of Allah Bakhsh and stated before the Police that the 'Chhavi' was recovered in his presence. Later on, when giving evidence before the Magistrate Jhanda said that he was not present when the 'Chhavi' was found. When I passed my order of the 20th of November, 1928, I had before me only the statement of Jhanda as recorded by the Head Constable in the Police Diary, and the record of Jhanda's evidence in Court, and I took the view that there was an obvious discrepancy between the two statements. I have now, however, had an opportunity of pursuing the judgment of the Magistrate, and I find that he took the view that the case against Allah Bakhsh was very doubtful and discharged him. The Magistrate commented on the evidence given by Jhanda who said nothing in his judgment implying that he took the view that Jhanda's evidence was untrue or biased.

In these circumstances, it would be clearly unfair to dismiss Jhanda from his lambardari for giving evidence which a judicial Court has accepted as true. It is true that the statement of Jhanda as recorded by

the Police under S. 161, Cr. P. C. does not agree with his statement in Court, but Jhanda could not have been aware of the record made of his statement to the Police by the Head Constable, and I am not satisfied that he actually told the Police that the 'Chhavi' was recovered in his presence.

Accordingly, I reject the appeal of Bahawal against the Commissioner's order of the 13th of June, 1928. That order which directed that Jhanda should be reinstated as Lambardar will hold good.

In view of all the circumstances I make no order as to costs.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 95 of 1928-29. (Decided on 21-3-1929).

Townsend, F.C.

NANAK CHAND

Applicant

Versus

CROWN

Other Side.

Excise Act, Ss. 61 (a), 80—offence under S. 61 (a) - whether compoundable.

The composition of offences under the Excise Act is governed by S. 80 of the Act and in that section no mention is made of offences under S. 61(a).

Case forwarded by the Commissioner of Jullundur Division.

ORDER,

This case has been sent to me by the Commissioner of Jullundur under his order dated 16th January 1929. It relates to offences of one Nanak Chand of Jullundur (who till recently held four licenses) against the Excise Act. The facts are given in the Commissioner's order, dated 21st November, 1928, 22nd December 1928 and that of January the 16th, 1929. The Commissioner, allowed the offences committed by Nanak Chand under S. 61 (a) of the Act to be compounded on payment of Rs. 500. I fear, however that that was not legal: the composition of offences under the Excise Act is governed by S. 80 of the Act, and in that section no mention is made of offences under S. 61 (a). Putting aside, however, this point, the present position is that all licenses held by the applicant have been cancelled, his stock has been forfeited, and he has been ordered to pay Rs. 500 by way of composition. The criminal case against him has, I understand, been withdrawn. The Commissioner considers the penalties imposed too severe and asks me for revision of his orders.

An examination, however, of the record shows, in my opinion, that the Commissioner takes too lenient a view of the offence. Nanak Chand is an old licensee and must be thoroughly acquainted with all the rules covering licenses. Moreover, he has, as a report of the Deputy Commissioner of Jullundur shows, been detected at least twice before in offences under the Excise Act. If I accept the Commissioner's recommendation *in toto* the result will be that Nanak Chand will only suffer by having his licenses forfeited and stock confiscated. In view of his record I am not prepared to agree that this penalty is sufficient and I decline to interfere, save that I reduce the amount of Rs. 500, which the Commissioner ordered him to pay, to Rs. 250. Application for revision accepted to this extent only. I decline to give Nanak Chand any excise license: I mention the point as his counsel particularly presses it.

Revision partially accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Review Side.

Revenue.

No. 11 of 1928-29. (Decided on 18-3-1929).

Townsend, F. C.

MALIK AHMAD YAR KHAN

Applicant

Versus

CROWN.

Other Side.

Zaildar—dismissal without charge—validity.

Without a charge being framed for the offence, a Zaildar should not be dismissed.

ORDER.

I have been asked to review my order dated 17th December, 1928, by which I declined to interfere, on the revisional side, with the Commissioner of Multan's order dated 13th September, 1928, rejecting the applicant's appeal from the order of the Collector of Multan, dated 12th January, 1928, dismissing him from the post of Zaildar. Some new points are urged in the present application, which merit discussion. I have therefore been into the case again with care.

The Collector's order dismissing applicant is brief, and not as clear as it might be. But apparently he dismissed him on the following charges:—

- (i) for neglect of work: and
- (ii) evading seeing him (Collector) when sent for. No details of these charges are given in the Collector's order. Having "disposed" of them, the Collector discussed a conversation alleged to have taken

place between applicant and the Tahsildar, the latter said it had taken place, the applicant denied it. Apparently Collector had this matter also in mind in dismissing the Zaildar, but no charge about it was framed.

The Commissioner on appeal discussed charges (i) and (ii) but in no detail. He mentions the applicant's defence on them but does not say whether he accepted that defence or not. He then discussed in more detail the conversation between the applicant and the Tahsildar, on which no charge had been framed against applicant by Collector, on it he apparently held that the applicant's statement that no such conversation took place was false.

But on this matter, as already said, no charge was framed against applicant by Collector. I cannot, in view of these facts, uphold the order of dismissal. The Commissioner apparently dismissed the applicant on the third point, the alleged conversation between him and the Tahsildar. But Collector framed no charge against him on this point. And the Commissioner arrived at no decision whatever on the first two charges, that of neglect of duty, and failure to see Collector when sent for on which applicant was dismissed.

Incidentally I note that the applicant's reply to these two charges is, in my opinion, not unsatisfactory.

So I accept this application for review of my order of 17th December 1928 : and accepting the application for revision, cancel the Collector's order, dated 12th January 1928, dismissing applicant from his post as Zaildar.

Whatever applicant's faults (and I am far from saying that he was entirely faultless), I think he has been sufficiently punished by the trouble and expense these proceedings must have involved.

Applicant will draw the emoluments of Zaildar from this date not from any earlier date. For the intervening period applicant will be regarded as being under suspension.

Review accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 4 of 1929-30. (Decided on 3-12-1929)

Calvert, F.C.

MUHAMMAD BAKHSH

Appellant.

Versus

MUHAMMAD IQBAL.

Respondent.

Lambardar—succession—disqualification—minority,—father dismissed—minor son with a *sarbarah* not under the influence of the dismissed Lambardar—may be appointed.

Held, that the appointment as Lambardar of the minor son of a dismissed Lambardar, with a *sarbarah* not under the influence of the latter does not amount to a practical re-appointment of the dismissed lambardar.

Appeal from the order of the Commissioner of Multan Division.

ORDER.

On the report of the Tahsildar of Toba Tek Singh, Hamid Ullah Lambardar, Chak 249, Gogera Branch, was dismissed by the Collector of Lyallpur on the 9th May 1928. The ground was that this Lambardar had headed a party which had made a deliberate attack on the Patwari of the village. Another man was convicted, and sentenced, but there was no sufficient evidence forthcoming to ensure a conviction of Hamid Ullah, as it was stated that his influence in the village was sufficient to prevent witnesses coming forward against him.

The Collector on 10th May 1929 appointed one, Muhammad Bakhsh as Lambardar, but the Commissioner, on appeal, appointed the minor son of the dismissed Lambardar.

Muhammad Bakhsh appeals.

The main point is whether the offence of Hamid Ullah does not prevent his son from being an efficient Lambardar. It is also urged that to appoint his minor son would practically be to re-appoint the father.

I find, however, that Hamid Ullah will suffer to a considerable extent. A *sarbarah* not under his influence is to be appointed; he loses the Lambardari square, and the Lambardari will not revert to the family until the minor son, now about seven years old, becomes of age.

It seems to me that the order of the Commissioner sufficiently deprives the dismissed Lambardar of influence and does not amount to a practical reappointment. I, therefore, decline to interfere and reject this appeal.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 14 of 1929-30. (Decided on 3-12-1929).

Calvert, F. C.

KAMAL DIN.

Appellant.

Versus

CROWN.

Respondent.

**Punjab Tenancy Act, S. 80—second appeal—competency of—
order on first appeal favouring petitioner.**

Held, that a right to further appeal can hardly be conferred by an order favouring the petitioner.

Punjab Tenancy Act, S. 84—revision—no legal point involved—no interference.

Where it was nowhere alleged that the officers, who had dealt with the case had failed to observe the prescribed procedure, and there was no legal point involved in the ground taken in revision, held, that there was no justification for interference.

Appeal from the order of the Commissioner of Rawalpindi Division.

ORDER.

Appellant, having had his land confiscated, for reasons into which we need not enter, claimed compensation under Section 25 of the Colonization of Government Lands Act for improvements. The improvements are chiefly represented by a fruit garden, and much trouble has been taken by various officers to arrive at a fair valuation of his garden.

The Collector awarded Rs. 8,872 and the learned Commissioner increased this to Rs. 12,524.

The grounds taken before me raise no point which was not considered by the officers below. They merely repeat the rather vague statements made before as to the value of the garden.

In *Rai Faiz Muhammad Khan v. Crown* (1) it was held that where a Commissioner on appeal merely varied the order in favour of the petitioner, there was no second appeal. Had the Commissioner in this case, rejected the appeal, there would have been no second appeal to the Financial Commissioner, and it was held that a right to further appeal could hardly be conferred by an order, favouring the petitioner. The same argument applies to the present case. This should, therefore, be treated as an application for revision.

It is nowhere alleged that the officers, who have dealt with the case, have failed to observe the prescribed procedure in any such way as would justify interference on the revision side. There is no legal point involved in the grounds taken before me. There is nothing fresh requiring further consideration. It is admittedly a difficult case to deal with, but I can find nothing which calls for any interference with the order of the Commissioner.

1, therefore, reject the application.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 75 of 1928-29.

Townsend, F. C.

PHULA SINGH

Applicant

Versus

SANTA SINGH and others

Other Side.

**Punjab Land Revenue Act, S. 123 - partition—agreement
between parties should be adhered to.**

Held, when a compromise has been come to, the decision should be in accordance therewith 8 P. R. 1896 F.B. (Rev) followed.

Case forwarded by the Commissioner of Lahore Division.

REFERENCE ORDER.

This is an application for revision in a partition case.

On 4th July 1925, the Naib Tahsildar proposed a mode of partition. The Revenue Assistant, however, finding some disagreement among the parties, returned the case, and the Naib Tahsildar then proposed another method on 10th October 1925; this was only sanctioned, and there was no appeal made against the order of the Revenue Assistant, dated 5th January 1926. When partition was being carried out, however, defects became apparent, the Naib Tahsildar reported accordingly, and the Revenue Assistant, after visiting the spot, obtained sanction to review his previous order, and a third mode of partition was sanctioned on 19th July, 1927. There was again no appeal. The actual partition was carried out by a retired Tahsildar but the petitioner was prejudiced by the result, and all the parties thereupon agreed before the Naib Tahsildar to get a fourth mode of partition. The Naib Tahsildar took down their statements to this effect and prepared the partition papers accordingly. When the parties appeared, however, before the Revenue Assistant, there were again dissensions, and the Revenue Assistant decided to adhere to the partition made by the retired Tahsildar. The petitioner appealed to the Collector, who dismissed his appeal, and he has now come to this Court for revision. Of the three respondents who have appeared before me, Ganda Singh supports the petitioner, but Santa Singh and Jagat Singh wish the partition made by the retired Tahsildar to be maintained.

It is certainly desirable that there should be an end to these disputes; and it might well be argued that either of the modes of partition originally settled and against which no appeal was made, should be maintained. At the same time, I consider that the fairest arrangement, come to, was that finally agreed to by all the parties before the Naib Tahsildar; it was then admitted that the petitioner was actually prejudiced by the partition carried out by the retired Tahsildar and the agreement then came to remove his objection. Further, on a legal point, the principle, laid down in the Full

Bench decision, *Harkka and another v. C. Krikpatrick and another* (1), is that, when a compromise has been come to, the decision should be in accordance therewith.

I think, therefore, that revision in this case is desirable, and I forward the reference to the Financial Commissioner accordingly.

ORDER.

Parties heard by pleaders.

I agree with the Commissioner. I sanction revision of the Revenue Assistant's order, dated 11th October, 1927, sanctioning the partition. Effect should be given to the agreement arrived at between all the parties on 9th October, 1927, before the Naib Tahsildar, Lala Hans Raj, and the proceedings, necessary to do so, should be complete as soon as possible. The case has been pending a very long time. No costs.

Revision allowed.

IN THE COURT OF FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenus.

No. 34 of 1929-30. (Decided on 19-12-1929).

Townsend, F. C.

NAINU RAM

Applicant.

Versus

RAHIM KHAN

Other Side.

Punjab Tenancy Act, Ss. 84 and 88—Evidence Act (I of 1872), S. 114 (g)—failure of a party to produce a document which could be produced raises a presumption against him—failure to discuss a ground of appeal is a serious irregularity of court.

The applicant claimed the produce of certain land and relied on a receipt in the possession of the respondent who denied the claim, admitted possession of the receipt, but failed to produce it, held, that the presumption must be that the production of the document was unfavourable to him. Held also, that failure of an Appellate Court to discuss a ground of appeal is a serious irregularity.

Case forwarded by the Commissioner of Multan Division.

ORDER OF THE COMMISSIONER.

This is an application for revision against the order of the Collector of Dera Ghazi Khan, dated the 12th March 1929, maintaining the order of the Assistant Collector, 1st grade, rejecting the claim of the applicant for produce for Rabi 1927. The land, of which the produce was in dispute, was mortgaged by the respondent to the applicant. There was a criminal case between the parties probably about this land, which was compounded and the land in suit was redeemed on payment of the mortgage money. It was alleged in the present case by the applicant that

(1) 8 P. R. 1896 F. B. (Rev.)

on the receipt for the redemption money a note was added that the produce in question was due to applicant. The applicant summoned the respondent and his son to produce the receipt in question. Although the respondent admitted 7th January 1929 that the receipt for the redemption existed (he did not admit that it contained a reference to the produce in dispute), he did not produce it when he appeared before the Court and stated that he did not bring it. The applicant again applied to the Court on the 8th of January 1929, asking that the respondent and his son be required to produce the receipt but the order of the Court states, no further evidence could be produced at that stage, and the point was not taken into consideration at the time of passing the judgment. The applicant rightly contended before the appellate Court that the failure or the part of the respondent to produce the receipt should carry a presumption against—see S. 114 (g) of the Evidence Act. The appellate Court, however, does not appear to have given any proper consideration to this and makes no mention of it in his order. The orders of both the trial and the appellate Courts were that the applicant must have received the value of the produce at the time the case about the redemption of the land was compromised and the redemption money paid. The appellate Court appears to have committed a serious irregularity in not discussing this ground of appeal and in not calling for the receipt. I, therefore, submit the case to the Financial Commissioners on the revision side with the recommendation that the case should be returned to the appellate Court who should call for the production of this receipt and consider it before passing a fresh order.

The parties do not wish to appear before the Financial Commissioners.

The respondent says before me that he is ready to produce the receipt now.

ORDER.

For the reasons given by the Commissioner in his reference, dated 30th November 1929, I set aside the order of the Collector on appeal before him, dated 18th March 1929, and return the case to him with instructions to hear the appeal *de novo*, both parties being summoned for the purpose. He should call for the production of the receipt referred by the Commissioner, and consider it before passing orders. I pass this order in the absence of the parties, as they told the Commissioners they do not wish to appear before me.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 43 of 1928-29. (Decided on 9-3-1929.)

Crail, F. C.

R. S. LALA GANGA RAM

Appellant

Versus

Respondent.

MUHAMMAD BAKHSH

Lambardar-creation of new post—Land Revenue rules—small village of 1000 acres—number of lambardars.

Held that, in appointment of Lambardars, Revenue Courts should observe the principles laid down in rule 15 of the Rules under the Land Revenue Act. Held also it is not desirable to appoint 3 Lambardars in a small Chak of little over 1000 acres.

Appeal from the order of the Commissioner, Multan Division.

ORDER.

The facts, regarding the Lambardari in this Chak of compensatory grantees, are fully stated in the Collector's order of the 14th of May, 1928. The Commissioner's order on appeal of the 13th of October, 1928, is of such an extraordinary nature that I feel it impossible to uphold it. The appeal to the Commissioner was presented by Muhammad Bakhsh, the present respondent, against the appointment as Lambardar of Rai Sahib Lala Ganga Ram, the present appellant. No request was made by Muhammad Bakhsh for the creation of a third Lambardari, nor was any recommendation to that effect made by any authority, subordinate to the Commissioner. In fact, nobody, either official or resident in the Chak, had at any such stage suggested the creation of a third Lambardari. The Commissioner, however, expressed the opinion in his order that "the most equitable arrangement and one, likely to conduce to peace, order and contentment in the village" would be to appoint a second Arain Lambardar for the Arain squares and a small area owned by another Muslim, and to appoint Rai Sahib Lala Ganga Ram as Lambardar for his own 115 acres and for the 26 acres of the only other Hindu owner in the Chak. The Commissioner's order proceeds as follows: "Under Notification 81, dated the 1st of March 1888, I, as Commissioner can make an original appointment of a Lambardar. Order accordingly."

The wording of this order is so ambiguous that it is impossible to say definitely whether it amounts to an order creating a third Lambardari, or whether it was also intended to be an order appointing Muhammad Bakhsh, the present respondent, to that Lambardari. As, however, the Commissioner did not remand the case to the Collector for the selection of another Lambardar, I take it that his intention was to appoint Muhammad Bakhsh as the third Lambardar, and this is the view that the appellant, Rai Sahib Lala Ganga Ram, has taken of the order. It is also, I may add, the view which the present Commissioner has taken of his predecessor's order.

I am unable to agree either with the proposition that a third Lambardari is necessary in this small Chak of a little over 1,000 acres, the whole of which I am informed has been allotted. I will agree with the Collector that two Lambardars are sufficient.

Nor do I agree with the Commissioner that if the third Lambardar had to be appointed, Muhammad Bakhsh would have been the most suitable person to select for that appointment. The Collector has described him as "an insignificant fellow" and, admittedly, he holds only 15½ acres in the Chak. There are several others of the original applicants, owning much larger areas, *e. g.*, Nabi Bakhsh and Usman Khan, the latter of whom is described by the Collector as a respectable man who is a Lambardar in his own village. In selecting Muhammad Bakhsh, the Commissioner, in my opinion, failed to observe the principles laid down in Rule 15 of the Rules under the Land Revenue Act.

For these reasons, I accept the appeal, set aside the order of the Commissioner, dated the 13th of October, 1928, and restore the order of the Collector, dated the 14th of May, 1928. The costs of this appeal will be borne by the respondent, Muhammad Bakhsh.

Appeal accepted.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings 1930.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision side.

Revenue.

No. 84 of 1929-30. (Decided on 4-1-1930).

Townsend, F. C.

QABUL

Applicant

Versus

KHAIRAN AND OTHERS

Other side.

**Punjab Land Revenue Act, Ss. 15 (1) (d) and 16 (1)—revision
—review by subordinate officer—parties not summoned.**

Sanction was granted by the Collector for review of the order of the Revenue Assistant. The latter sent the file to the Naib-Tahsildar for amal daramad, without summoning the parties. Held, that there were two serious irregularities committed demanding interference ; in the first place, any order on review should have been passed by the Assistant Collector, 1st Grade, himself and not by the Naib-Tahsildar ; secondly, the Revenue Assistant should not have passed any order on the review without summoning the parties—vide S. 15 (1) (d) of the Land Revenue Act.

Case forwarded by the Commissioner of Multan Division.

ORDER.

For the reasons given by the Commissioner of Multan in his reference, dated November 28th, 1929, I cancel the order of the Revenue Assistant, dated 24th August, 1928. The case should be reheard again from the stage it had reached before that order was passed. In particular the order of September, 1927, sanctioning the mode of partition should not be reviewed until the parties to the case have been heard.

Order accordingly

The order of Commissioner referred to above is as follows :—

This case was really lodged as a revision against the order of the Collector of Dera Ghazi Khan, dated 23rd August 1928 according

permission on the report of the Assistant Collector, 1st grade, Dera Ghazi Khan, to review an order of his (the Assistant Collector) dated 6th September 1927, sanctioning the mode of partition in a partition case between the applicant and the respondents. When the application for permission to review was made to him, the Collector granted sanction and sent the file to the Revenue Assistant who, on 24th August, 1928, passed the following order :—

“ Permission to review has been granted. File to be sent to the Tahsil for *amal daramad*.” The Naib-Tahsildar then, on 8th September 1928, passed an order altering the mode of partition in accordance with the recommendation made by the Tahsildar when the latter had reported the case to the Revenue Assistant and suggested that it should be reviewed. (The Revenue Assistant apparently in his report to the Collector approved of the recommendation of Tahsildar.) There are two serious irregularities in the case. In the first place any order on review should have been passed by the Assistant Collector, 1st grade, himself and not by the Naib-Tahsildar. Secondly, the Revenue Assistant should not have passed any order on the review without summoning the parties—*vide* S. 15 (1) (d) of the Land Revenue Act. It is admitted that none of the parties was summoned by the Revenue Assistant in accordance with S. 16 (1) of the Land Revenue Act.

There is nothing wrong in the Collector's order giving permission to review and so that order should not be revised. But the Revenue Assistant's order is clearly illegal.

On the merits of the case it seems advisable that it should be considered whether the two numbers, which have been kept out of partition by the order passed by the Naib-Tahsildar on 8th September, 1928, should have been excluded entirely from the partition, especially as there is an allegation that an encroachment appears to have been dishonestly made by one of the co-sharers after the partition had been sanctioned. The foot-path too, it should be noted, appears never to have been properly demarcated, nor the *batta* areas of *khasra* No. 317 shown by distinct marks.

Owing to the two irregularities in the Revenue Assistant's order of 24th August 1928, I submit the case to the Financial Commissioner under S. 16 (3) of the Land Revenue Act with the recommendation that the order of the Revenue Assistant, dated 24th August 1928, should be revised and that he should be directed to hear the parties before passing an order on review.

The parties who are present to-day, do not wish to appear before the Financial Commissioner as regards this recommendation.

BAHADUR v. SHARAF ALI
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

3

Appellate Side.

Revenue.

No. 50 of 1928-29. (Decided on 5-1-1930.)

Townsend, F. C.

BAHADUR

Appellant

Versus

SHARAF ALI

Other side.

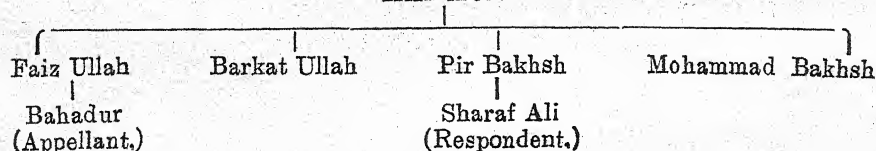
Lambardar—succession—primogeniture—Land Revenue Act (XXXIII of 1871)—under rule No. 17 (11) the nearest eligible heir according to the rule of primogeniture must be appointed—absence of a note by the Revenue Officer that the claims of a heir passed over for one reason or other should be considered on the occurrence of next vacancy is very material.

One P Lambardar died leaving his son S who had worked as his Sarbarah for 12 years, B claimed the Lambardari. He alleged his grandfather K who was also grandfather of S was Lambardar. He was succeeded by F, the father of B; but as F was ill, he appointed P Sarabarrah. On the death of F, P became Lambardar because B was then a minor; and under the Land Revenue Act, 33 of 1871, then in force, minors could not be appointed Lambardars. B claimed that the post should revert to him as representative of the senior branch. There was no note by the Revenue Officer at the time of appointing P as Lambardar that the claim of B should be considered on the occurrence of next vacancy. Held, that in the absence of a note by the Revenue Officer on the appointment of P, that the claim of B would be considered on the occurrence of next vacancy of the post, S must be preferred to B as the nearest eligible heir according to the rule of primogeniture embodied in the present Land Revenue Rule No. 17 (11). 3 P. R. 1894 (Rev.); 7 P. R. 1896 (Rev.) dist.

Appeal from the order of Commissioner, Rawalpindi Division.
ORDER.

This is a *Lambardari* appeal from the Rawalpindi district, and the facts will be clear from this pedigres-table:—

KAMMUN



Pir Bakhsh, *Lambardar*, died on 13th March 1928, leaving one son Sharaf Ali who has worked as his *Sarbrah* for 12 years. Bahadur claims the *Lambardari*. He says his grand-father Kammun, who was also grand-father of Sharaf Ali, was *Lambardar*. He was succeeded by Faiz Ullah; but as the latter was ill, he appointed Pir Bakhsh, *Sarbrah*. On his death Pir Bakhsh became *Lambardar* because he (Bahadur) was then a minor. He now claims that the post should revert to him as representative of the senior branch. Pir

Bakhsh was appointed *Lambardar* on May 18th 1879, and most of the trouble that lies in this case is due to the fact that at that time the old Land Revenue Act, 33 of 1871, was in force. Under that Act minors could not be appointed *Lambardars*. Under the present Act of course they are eligible for the appointment. The Collector accepted the contention of Bahadur and appointed him *Lambardar*. The Commissioner held that the law on the subject is clear, and that under Land Revenue Rule No. 17 (ii) the nearest eligible heir according to the rule of primogeniture must be appointed. Accordingly he accepted the appeal and appointed Sharaf Ali.

Bahadur appeals to me and I have to-day heard counsel for both parties. The matter has been before the Financial Commissioner earlier. Thus in *Ahmad Din v. Muhammad Ali* (1) Mr. Ogilvie held that, in the case of a person who had been legally declared under the earlier rules to have a claim to be appointed on the next vacancy, the claim of such person must be taken into consideration together with the claim of the nearest heir on the appointment falling vacant, even though such vacancy occurred under the latter rules. But that case is not on all fours with the present case as in the latter Bahadur had not been legally declared, under the earlier rules, to have a claim to the next vacancy. The original file of the case which led to the appointment of Pir Bakhsh, *Lambardar*, is not forthcoming. In *Waryam Singh v. Tharaj Singh* (2) Sir Lewis Tupper held that under rule A. I 4 of the rules under the Punjab Land Revenue Act of 1867, in cases where, in the appointment of a successor to a deceased *Lambardar*, the nearest heir is passed over on the ground of youth, the absence of a note by the Revenue Officer to the effect that the claims of such heir are to be considered when the post falls vacant again is very material, but that in a case where the claim of the nearest heir has been overlooked by mistake and the claimant comes forward at the earliest opportunity to seek his remedy by appeal, or when there was sufficient excuse for his not appealing, when the succession next opened out, his claims should be taken into consideration. In this case, as already said, there is no note by the Revenue Officer to the effect that the claims of such heir (in this case Bahadur) are to be considered when the post falls vacant again, nor is it a fact that Bahadur's claims were originally overlooked by mistake. I consider that in the circumstances of this case the Commissioner was right. Land Revenue Rule No. 17 (ii) of the present rules under Land Revenue Act must be interpreted strictly, though in exceptional cases, such as those referred by Sir Lewis Tupper, facts may exist which justify departure from it. In this case no such facts exist. I therefore reject the appeal. Parties may bear their own costs.

Appeal rejected.

(1) 3 P.R. 1894 (Rev.)
(2) 7 P.R. 1896 (Rev.)

TEK RAM v. KHUSHI RAM 5
IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 89 of 1928-29. (Decided on 15. 1. 1930)

Townsend. F. C.

TEK RAM and others

Applicants

Versus

KHUSHI RAM

Other Side.

Punjab Land Revenue Act, Ss. 15, 16—review—order not passed by the Collector—review by him, whether legal—review, not as an alternative to appeal or revision—special cases.

Held, that where the order reviewed was not passed by the Collector himself, his order on review was *ultra vires* in the absence of previous sanction; that it was not the intention of the Punjab Land Revenue Act that the procedure for review should be used as an alternative to appeal or revision, and that in special cases neglect to appeal within the period of limitation may be condoned and proper relief given in review.

Case forwarded by the Commissioner of Ambala Division.

ORDER

Tek Ram, etc., heard through Mr. Shamair Chand, Advocate.

For the reasons given by the Commissioner in his reference, dated 29th December 1928, I set aside the order of the Naib-Tahsildar, dated 5th September, 1927, ordering that Khushi Ram's name be struck off from the column of ownership. It was grossly irregular and unfair to Khushi Ram.

Parties may pay their own costs.

Order set aside.

The order of the Commissioner referred to above is as follows :—

One Udmi died leaving Mst. Jeo, the widow of his son, who predeceased him and her son Khushi Ram. Mutation was effected in favour of Khushi Ram but on appeal the land was mutated in favour of Mst. Jeo and on her death in favour of the collaterals. The last mutation was on 4th June, 1919. On 21st January, 1920, mutation of gift by the collaterals in favour of Khushi Ram was effected. Khushi Ram brought a suit for ejectment but failed on the ground that he has never been in possession. Mutation erasing his name was effected on the 5th November, 1927. Application for review was made on the 27th July, 1928, and has been accepted by the Collector. Hence this appeal.

The first question is whether the Collector was competent to review the order. As the order reviewed was not passed by the Collector himself his order is *ultra vires* in the absence of previous sanction, nor is it the intention of the Act that the procedure for review should be used as an alternative to appeal or revision. It is true that the origin-

nal order was passed by the Special Naib-Tahsildar but that Special Naib-Tahsildar was presumably in charge of certain area which must have been made over to regular revenue establishment, and, therefore, I do not consider that the Collector can be deemed to be his successor-in-office.

The point remains whether I should report the case on the merits for the orders of the Financial Commissioner. On the merits the original order cannot be defended as the Collector rightly says that the rent case did not bring directly in issue the right of the minor proprietor. I also think that the neglect to appeal may be condoned. Khushi Ram who is illegitimate, appears to have no friends and I think it is a case in which the neglect to appeal within the period of limitation may be condoned. I consider that the order striking off Khushi Ram's name cannot be held to be followed rightly from the order dismissing his suit for rent. I, therefore, recommend that the order be set aside.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 45 of 1928-29. (Decided on 15-1-1930.)

Townsend, F. C.

SUNDER Das and others

Appellants

Versus

MEHR SHAH & NUR SHAH

Respondents.

Punjab Land Revenue Act, S. 31 (2) (b)—entries in Administration Papers.

Held that entries made in the Administration Papers at a particular settlement but not repealed at the following settlement should not be incorporated in the records prepared at a settlement of a later date. 130 P.R. 1907 referred.

Appeal from the order of the Commissioner of the Multan Division.

ORDER.

While attesting the *wajib-ul-arz* or statement of customs respecting rights and liabilities in the estate of Tutwala in Tahsil and District Montgomery under S. 31 (2) (b) of the Land Revenue Act, Malik Abdul Haq, the Collector, wrote as follows:—

“No copy of the *wajib-ul-arz* of this estate is traceable in respect of the settlement of 1872. Counsel for the proprietors has put in a copy of their statements which contravene the provisions of Ss. 63 and 109 of the Tenancy Act. It is therefore against law to give effect to these statements that the tenants are not entitled to plant trees and to sink wells. The question before me at present is about the right of ownership in trees. As no authority or settlement record is forthcoming regarding this point, and there is a difference of opinion between the landlords and their

tenants, no custom can be considered to have been established or attested regarding this question. It appears that the tenants are not paying anything to the proprietors in respect of trees. An entry should be made in the *wajib-ul-arz* of the village accordingly."

The landlords appealed against that order to the Commissioner. Before him a copy of the *wajib-ul-arz* of 1872 settlement was produced. The Commissioner wrote as follows :—

"The *wajib-ul-arz* of 1872 contains the statements of the proprietors as well as of the tenants, showing, in unequivocal terms, that the occupancy tenants cannot cut trees standing on the land without the permission of the proprietors.

It is true that this stipulation in the *wajib-ul-arz* was not repeated in that of 1896-97, but that cannot extinguish the proprietors' rights. At the same time there is no mention anywhere that the tenants have unrestricted power in the matter of trees".

The Commissioner, therefore, accepted the appeal, and setting aside the Collector's order, directed, that the entries in the *wajib-ul-arz* of 1872 should be repeated in that of the present settlement. They run as follows :—

"Drakhtan maujuda ko muzarian ba-ikhtiar khud drau nahin kar sakte sirf waste alat kasha warzi ba-ijazat malik drau kar sakte hain ainda badun marzi malikan ke lagane drakhtan ka mozarian ko ikhtiyar nahin hai. Agar badun marzi malikan lagawen to waqt bedakhili mozarian ke drakht malkiyat malikan honge. Kuchh haq mozarian nisbat khud rau nahin hoga. Basharah maujuda ke amal hoga."

Against that order the tenants have appealed to me, and I have to-day heard counsel for them and for the respondents (landlords). I am of opinion that the Commissioner's order cannot stand. When the settlement of 1872 was made the older Tenancy Act of 1868 was in force, and it was considerably less favourable to tenants in the matter of improvements, in which are included trees under S. 4 (19) explanation (c) of the present Tenancy Act, than the later Tenancy Act of 1887. *Puran v. Mamvon* (1) is relevant. But what is of more importance is that the very experienced settlement officer of 1892-99 Mr. (now Sir) Patrick Fagan did not repeat the entry of 1872 in his settlement records. It would, in my opinion, be extremely dangerous for us to incorporate now in our revenue records any statements as to the rights in trees of landlords and tenants without the fullest justification. S. 109 of the Tenancy Act is of importance. I therefore set aside the Commissioner's order. But I cannot let the order of the Collector remain as it is. He wrote as follows :—

"It appears that the tenants are not paying anything to the proprietors in respect of trees. An entry should be made in the *wajib-ul-arz* of the village accordingly."

I consider that Mr. Fagan was much wiser in not saying anything whatever on the matter, and I order, accepting the appeal, that the *wajib-ul-arz* of this village should be entirely silent on this point. Appeal accepted. Parties to bear their own costs in my Court.

Appeal accepted.

LAHORE HIGH COURT.

Revision Side,

Civil.

No. 619 of 1929. (Decided on 17-1-1930).

Shadi Lal, C. J.

MUHAMMAD MASUD and others

Petitioners

Versus

SHIV CHARAN LAL and others

Respondents.

Punjab Land Revenue Act, S. 117 (2) (d)—Proceedings before the Revenue Officer—injunction, if can be granted.

No injunction can be issued to the Revenue Officer before whom the partition proceedings are pending, S. 117 (2) (d), Land Revenue Act, being inapplicable to the case. Where it is common ground that the parties are co-sharers in the property and there is no dispute about the shares to which they are entitled, the partition proceedings, if carried out, are not likely to disturb the status quo, and no adequate ground has been shown, no injunction should be issued against the proceedings before the Revenue Officer.

Civil Revision for stay of partition proceedings.

Petitioners:—by Mr. Azim Ullah.

Respondents:—by Messrs. Badri Das and Balwant Rai.

JUDGMENT.

It is not seriously disputed that no injunction can be issued to the Revenue Officer before whom the partition proceedings are pending, S. 117 (2) (d), Land Revenue Act, being inapplicable to this case. If any authority on the subject is needed, I would refer to *Malik Sohara Khan v. Ahmad Khan* (1). The learned counsel for the applicants however prays that an injunction be issued to the respondents restraining them from prosecuting the partition proceedings.

Now, it is common ground that the parties are co-sharers in the property and there is no dispute about the shares to which they are entitled. The only bone of contention is whether the respondents should be allowed to keep the property which is in their possession. It is conceded that the partition proceedings, if carried out, are not likely to disturb the *status quo*, and no adequate ground has been shown why I should stay the proceedings before the Revenue Officer.

The application is accordingly dismissed.

Application dismissed.

QUTAB-UD-DIN v. SHIBBU
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

9

Appellate Side

No. 8 of 1928-29. (Decided on 6-2-1930).

Townsend, F. C.

Revenue.

QUTAB-UD-DIN and others

Versus

Appellants

SHIBBU and others

Respondents.

**Punjab Tenancy Act, S. 5—inferior proprietor—recognition of—
advisability of giving higher status than that claimed.**

Held, that a class of cultivator known as 'inferior proprietor' is not recognized in the Tenancy Act, though it is in the Land Revenue Act. Held further that a tenant should not be awarded a higher status than he himself claims.

Appeal from the order of Commissioner of Jullundur Division.

ORDER.

I heard Mr. Niaz Muhammad, Advocate, for landlords-appellants and Diwan Mehr Chand for tenants-respondents a few days ago. I now write my order.

The facts are given in the orders of the original and the appellate Courts. I consider that the trial Court was right and the Commissioner wrong. The former held that the tenants held under S. 5 (1) (d) of the Tenancy Act. The Commissioner held that they were a "sort of inferior proprietor." Such a class of cultivator is not recognized in the Tenancy Act, though it is in the Land Revenue Act. But here we are concerned with the former, not the latter Act.

Para 181 of the Settlement Manual is in point: and *Kartar Singh and another v. Puran* (1) though the facts are different to those of the present case, is not altogether irrelevant.

The Commissioner by order dated 7th September 1848 ordered that the land should be held free of land revenue by the predecessors-in title of the present tenants for their lives. The Settlement Officer of 1884 in his order dated January 3, 1884, directed that settlement should be made with the heirs of the muafidars. The land thus then ceased to be muafi. In the same order it was directed that the tenant should pay rent to the owners to the amount of Rs. 5. This amount was apparently to be paid out of the land revenue. It is a pity the intention of the order was not made clear. It is, however, obvious that after 1884 at any rate the tenants had ceased to be muafidars of the land.

In the revenue records how this land is entered in the column of ownership as "shamilat deh" and in the same column the present tenants or their predecessors-in-title, are entered as "malguzars." This entry obviously was made following the order of January 3, 1884. The same tenants are however, also now shown in the tenancy column as "occupancy tenants" (3) 3 P. R. 1908 (Rev.)

and the rent column shows the payment of the ordinary land revenue *plus malikana* to the landlords

Further—and the point is important—the tenants themselves in their “Jawab Dawa” in the present case did not contend that they were owners even “inferior proprietors” as the Commissioner considered them. They admitted that they were tenants under the landlords, but said that they were occupancy tenants under S. 5 (sub-section unspecified) of the Tenancy Act. I see no reason why we should now give the tenants a higher status, as did the Commissioner, than they themselves claimed.

Taking all the facts into consideration, I have no doubt whatever that the tenants hold under the latter portion of S. 5 (1) (d) of the Tenancy Act. Six annas per rupee of the land revenue is the maximum enhancement permissible under S. 22 (1) (b) of the Act: and this amount was ordered by the trial Court. For reasons given both by it and by the Commissioner I agree that this degree of enhancement is suitable.

The question of compensation has been adequately dealt with.

I, therefore, accept the appeal, and reversing the Commissioner's order dated 18th October, 1928, restore that of the Assistant Collector, dated 2nd March, 1928, with the variation, however, that enhancement should only take effect from Rabi 1930.

Parties may, in view of the complicated nature of the case, pay their own costs throughout.

Appeal accepted.

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IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

No. 73 of 1929-30. (Decided on 23-4-1930).

Townsend, F.C.

Revenue.

DHANI RAM and others

Versus

Applicants

GOSHAUN

Other Side.

Punjab Land Revenue Act, S. 16—Revision—perfunctory judgment by Appellate Court—interference.

Where the judgment of the Appellate Court was a perfunctory one and did not discuss any of the grounds of appeal, the order of the Appellate Court was interfered with on revision and the case was remanded to the Appellate Court to re-hear the case and to write a full judgment.

Case forwarded by the Commissioner of Jullundur Division.

ORDER.

For the reasons given by the Commissioner in his reference dated 12th

February, 1930, I accept this revision, cancel the Collector's order on appeal dated 17th September, 1929, and direct him to rehear it again after having given the parties another opportunity of representing their cases before him. He should then write a full judgment, discussing each of the grounds of appeal, and arriving at a definite finding on each of them. His judgment of 17th September, 1929 is, as Commissioner says, perfunctory : I add the words "to a degree."

Parties may pay their own costs in Commissioner's and my Court so far as the present revisions are concerned.

Revision accepted,

The order of the Commissioner referred to above is as follows :

The proprietors of Tika Khalaut, Hamirpur Tahsil, served a notice of ejectment on one Goshaun who is entered as tenant clause B (3) of 84 kanals 10 marlas of Shamilat land. He brought a suit to contest the notice of ejectment, claiming to be an occupancy tenant of the land.

The suit was heard by the Revenue Assistant who decided in plaintiff's favour and cancelled the notice of ejectment.

The defendants appealed to the Collector on ten grounds.

He has dismissed the appeal without discussing a single ground of appeal or giving any reasons for his decision.

The defendants have applied for revision, the first ground for revision being "that the lower appellate Court disposed of all the grounds of appeal and has not written a legal judgment. Hence it is liable to be set aside."

It has been laid down in many rulings that the appellate Court must deal with the grounds of appeal and write an independent judgment. A recent ruling to this effect is that quoted in *Mst. Aisha Bibi v. Mst. Sughra Ji and others* (1) and another quoted in *Sri Ranganatha Thathachariar and other v. Veranali Rajagopalachariar and others* (2) which is very much to the point in the present case.

More recently the Financial Commissioner (Mr. Townsend) in case No. 34 of 1929-30 *Nainu Ram v. Rahim Khan* (3) set aside the order of a Collector and returned the appeal to be heard *de novo* because one important ground of appeal had not been dealt with.

On the ground that the judgment of the appellate Court is a perfunctory one and does not discuss any of the grounds of appeal, I refer the case to the Financial Commissioners for revision and recommend that the Collector be directed to rehear the appeal and write an independent judgment after discussing the grounds of appeal.

Petitioners desire to be represented before the Financial Commissioners.

(1) A.I.R. 1928 Lah. 658.

(2) A.I.R. 1928 Mad. 16.

(3) Case No. 34 of 1929-30

12 PUNJAB CASE-LAW, PART C. [1930]
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 4 of 1928-29. (Decided on 25-4-1930.)

Townsend, F. C.

BHAGWANA and others

Defendants-Appellants

Vers us

MEHR CHAND and others

Respondents.

(i) Punjab Tenancy Act, Ss. 24 and 88—suit for enhancement of rent—all landlords may not join in.

Where the eldest of three brothers who managed the property brought a suit as landlord for enhancement of rent: held, it was unnecessary to join the other two who were in service at a great distance from the Court 3 P.R. 1903 (Rev.) fol.

(ii) Punjab Tenancy Act, Ss. 24, —enhancement of rent—occupancy tenant under S. 5 (1) a.

Held, that in the case of occupancy tenants under S. 5 (1) (a) rent can be enhanced to the extent of 0-2-0 in the rupee of the land revenue.

(iii) Punjab Tenancy Act, Ss. 70 and 80—compensation, determination of is compulsory.

Held, that the provisions of S. 70 are compulsory and the question of compensation due to a tenant should be adequately dealt with in a suit for enhancement of rent. If the lower Courts fail to do so, the case may be remanded on appeal for such adjudication.

Appeal against the order of Commissioner, Jullundur Division.

ORDER.

This is a simple enough enhancement of rent case. There is agreement between the two lower Courts that the tenants-appellants hold under S. 5 (1) (a) of the Tenancy Act. The trial Court, for no very obvious reasons, ordered that no enhancement of rent was admissible, although the law says it can be enhanced up to 0-2-0 in the rupee of the land revenue. That amount the Commissioner ordered: and rightly. The enhancement is very small.

Following P.R. (Revenue) 3 of 1903, I hold that it was unnecessary for all the landlords to join in the suit. Mehr Chand, the eldest brother, who manages the property brought it. The other two brothers who are joint owners with him are in service at Delhi, Commissioner says. In the circumstances it would be unreasonable to ask them all to join this case.

Unfortunately the question of compensation has been inadequately dealt with, and the compulsory provisions of S. 70 of the Tenancy Act overlooked. The trial Court, it is true, formed an issue on the point but arrived at no decisive conclusion on it, as it held that no enhancement

was called for. The Commissioner found that enhancement was justified, but overlooked the question of compensation, it must now be enquired into.

I, therefore, dismiss the appeal on the question of enhancement, agreeing as I do with Commissioner on the point. But I accept the appeal on the question of compensation due to tenants on account of this enhancement: S. 70 of the Tenancy Act. The Commissioner will kindly direct the Collector of Hoshiarpur to arrive at a definite finding as to what, if any, compensation is due to the tenant for this enhancement. The Collector can either do this himself or through an Assistant Collector, first grade. The finding on the matter will be subject to appeal under the ordinary rules. *Appeal partly accepted*

Appeal accepted in part. No order as to costs

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 37 of 1929-30. (Decided on 25-4-1930).

Calvert, F.C.

SUBEDAR-MAJOR SEWA SINGH..... *Appellant*

Versus

CHANAN SINGH..... *Respondent.*

Lambardar—hereditary claim—seven years' service ending with dismissal—Land Revenue Rules, rule 17 (1)—para 455 of the Colony Manual—Collector's discretion.

Held (i) that seven years' service as a Lambardar, after first appointment ending with dismissal, is not sufficient to establish hereditary claims;

(ii) that under Rule 17 (1) in the case of Government property, it is not binding on the Collector to follow hereditary claims and that para 455 of Colony Manual is not a rule under the Land Revenue Act, and cannot set aside rule 17 (1) framed under that Act, for para 455 merely states the practice; and

(iii) that the Collector should be given a free hand to appoint the best man available.

Appeal from the order of the Commissioner of Multan Division.

ORDER.

The facts of this case appear to be that a Lambardar, Subedar Hira Singh, was dismissed from his post on account of having committed perjury in a criminal case. He was first convicted of the offence but on a retrial was discharged. The question of his dismissal is not before me. The Collector appointed Subedar-Major Sewa Singh as Lambardar in succession. The Commissioner on appeal held, in his order dated 14th October 1929, that the offence for which the late Lambardar was dismissed was not such as to disqualify his son, who would not likely be under his father's influence, and he accepted the appeal

of Chanan Singh, son of the dismissed Lambardar and appointed him Lambardar.

The first point to be taken is that the dismissed Lambardar was the first appointed to this chak on colonization; this was about 1922, and he was dismissed seven years later as unfit to be Lambardar. The learned Commissioner seems to have considered that seven years' service ending with dismissal was sufficient to establish hereditary claims for all times; with that I cannot agree. Under rule 17 (1), as this chak is still the property of Government, it is not binding on the Collector to follow hereditary claim. Para. 455 of the Colony Manual is not a rule under the Land Revenue Act, and cannot set aside the rule 17 (1) framed under that Act. Para 455 merely states the practice. I do not wish here to go into the principles governing the introduction of the hereditary element into colony lambardaries; my opinion is that seven years' service after first appointment ending with dismissal is not sufficient to establish hereditary claims.

The Collector had a clear discretion and I do not think this was a case in which that discretion should have been interfered with. The Collector was clearly of the opinion that Subedar-Major Sewa Singh was the better man for the post, and the learned Commissioner does not dispute this. I think that the Collector had a free hand to appoint the best man available and he did so.

I accept this appeal and, setting aside the order of the learned Commissioner dated 14th October 1929, I restore that of the Collector, dated 30th April 1929, appointing Subedar-Major Sewa Singh as Lambardar.

Appeal accepted.

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IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

Revision Side

Revenue.

No. 82 of 1929-30. (Decided on 28-4-1930).

Townsend and Calvert, F. Cs.

MST, SHARAFAN...

Applicant

Versus

IMAM

Other side.

Punjab Tenancy Act, S. 59—rules 9 and 10—(Punjab Colony Manual) rule of primogeniture.

S was the original grantee of a horse-breeding grant in the Sargodha Colony under the terms of the Sanad of occupancy rights. Succession was to follow the rules of primogeniture appended as a schedule to the deed of grant. On the death of S the grant passed to his son A and on his death to his wife Ghulam Fatima. The last one was married to one I and her tenancy determined. Held, that under

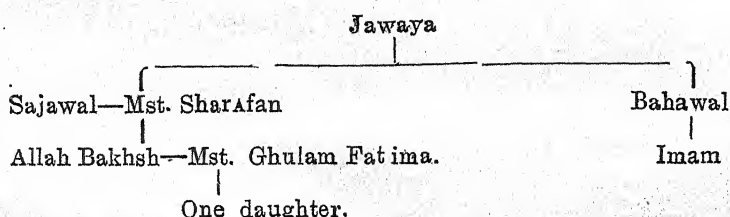
the circumstances Mst. Sharafan, the widow, must succeed in preference to I, whose grandfather and the original grantee's father was the same person, for the rule is that the relations of the first grantee should be exhausted before others descended from a common ancestor should be considered.

Revision from the order of the Commissioner of the Rawalpindi Division.

ORDER.

As there appeared reason to believe that the facts of this case were not fully covered by the Act or Rules, both Financial Commissioners have heard it together.

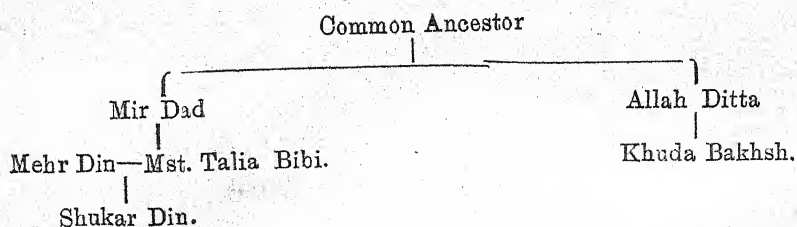
The facts are simple. The following table will make them clear :—



Sajawal was the original grantee of a horse-breeding grant in the Sargodha Colony: under the terms of the sanad of occupancy right, succession was to follow the Rules of Primogeniture appended as a schedule to the deed of grant. These are printed on pages 137—40 of the Punjab Colony Manual, Volume II (Revised Edition). In accordance with these rules, on the death of Sajawal the grant passed to his son, Allah Bakhsh, and on his death to his wife Ghulam Fatima. On her being married to Imam her tenancy was determined, and the question before us is that of the succession to the tenancy. In a somewhat similar case, a former Financial Commissioner, Mr. Barron, had decided that the relations of the first grantee should be exhausted before others descended from a common ancestor should be considered. The Collector was of opinion that this decision should not be followed. He rightly held that there were no descendants as defined in the Rules of Primogeniture, and then decided that, as rule 9 was of no help, the tenancy should, under rule 10 pass, to Imam. He appears to have overlooked the fact that rule 10 only applies where "there has been no predecessor in the tenancy." In this case both, Allah Bakhsh and Sajawal had preceded Mst. Ghulam Fatima in the tenancy. Therefore under the rule Imam cannot succeed.

Rule 9 prescribes the order of succession amongst descendants of predecessors in the tenancy, it does not allow succession to descendants of a common ancestor when that common ancestor had not held the tenancy.

In the previous case Mr. Barron (Revision Side No. 101 of 1923-24, decided on 5th May, 1924) was faced with the following facts :—



The original grantee was Mir Dad, his son in course of time succeeded him and died leaving a son, Shukar Din, a widow Talia Bibi, and daughters. Shukar Din succeeded and later died without leaving issue or widow. Khuda Bakhsh claimed but the succession was decided in favour of Mst. Talia Bibi, as it was held that rule 10 could not apply, and that while rule 9 did not strictly apply, it was the only guide left, and the "motive underlying that rule appears to be that descendants of actual predecessors in the tenancy have to be provided for before we go outside the line in the family which they represent. It is only in the event of the entire failure of the past holder's line of descent that we go outside to the next senior line."

In this case, the decision, therefore, went in favour of Mst. Talia Bibi. This decision both Collector and Commissioner have refused to follow. But, as has been stated, their finding in favour of Imam under rule 10 cannot be upheld, as that rule does not apply to the facts in issue.

We are of opinion that the rules do not fully cover the facts of the case, and that if interpreted strictly they are not decisive. It is, however, clear that at one time, previous to the birth of Allah Bakhsh, Mst. Sharfan could have inherited a life interest in the grant under the rules; her right to succeed was placed in abeyance by the birth of Allah Bakhsh, but would have revived if, at any time, Allah Bakhsh had died during the life-time of his father, Sajawal. Therefore, although the rules, strictly interpreted, do not prescribe this course, we are of opinion that Mst. Sharfan should succeed to a life interest. We agree with Mr. Barron that the heirs of the 1st tenant should be exhausted before the claims of others whose common ancestor never held the tenancy can be considered. We, therefore, accept the application and direct that mutation be made in favour of Mst. Sharfan in the life interest or until re-marriage, with six killas for the maintenance of Mst. Sarwar, the daughter of Allah Bakhsh.

Application accepted.

SAID KHAN *v.* LAL KHAN
IN THE COURT OF THE FINANCIAL COMMISSIONER
OF THE PUNJAB.

17

Appellate

Revenue

No. 17 of 1929-F0. (Decided on 28-4-1930)

Townsend and Calvert, F. Cs.

SAID KHAN.

Appellant.

Versus

LAL KHAN.

Respondent.

Punjab Land Revenue Rule 17 (1) and (2)—Lambardar—appointment—colony village—principles to be applied—speculative nature of—appointments—dismissal of father.

Held, that mere relationship should not provide a reason for introducing into a colony village as Lambardar a stranger from another tract altogether, especially when that stranger, (except for a gift privately arranged for the purpose) would not have been a land-holder in the village. Held further, that the first appointments to the posts of Headmen, in colony village, must be somewhat speculative, and, where the first holder or his direct descendant proves unsuitable, the post may similarly be taken from the family and given to other colonists in the village. Held also, that the rule of depriving the family of a dismissed Lambardar of the right to succeed to lambardari, in cases where the fault is serious enough to justify the steps, may be followed under similar circumstances in the colonies, where the post is not an old one and where the family has failed to produce a satisfactory successor.

Appeal from the order of the Commissioner, Multan Division.

ORDER.

As this case raised the important point as to the stage at which and the degree in which the hereditary principle should be introduced into the succession to lambardaries in colonies, it has been heard by both Financial Commissioners sitting together.

Under Land Revenue Rule 17 (i) it is prescribed that where an estate is owned chiefly or altogether by Government, the successor to the office of headman shall be selected without regard to hereditary claims. In other cases, under part (ii) of the same rule, the nearest eligible heir is to be appointed.

Ordinarily, a colony village begins with the land wholly owned by Government, and the colonists being first tenants-at-will and later occupancy tenants, only begin to become proprietors as they acquire these rights by purchase. There is thus a transition from the stage governed by sub-clause (i) to that dealt with in (ii), and, in this transitional stage, the hereditary character of the succession to posts of lambardar is a question of some difficulty.

In the case before us, one Sadiq was appointed original lambardar on probation sometime about the beginning of colonization; he was confirmed in 1907 and was succeeded by his son, Falak Sher, in 1919. The latter

was a minor until shortly before 1927, when he was dismissed. To fill the vacancy, the Collector appointed the best candidate available. one Said Biloch, for reasons contained in his order, dated 13th February 1929. The Commissioner, on appeal, in his order, dated 30th August 1929, seemed to consider, that the hereditary principle should apply by virtue of rule 17 (ii), and held that there was not sufficient ground for neglecting the claims of close relationship.

The person thus elected was the brother of the original lambardar and uncle of the one dismissed. He was not a colonist in this Chak or even in this colony; he resided in another district, where his home was; after the dismissal of his nephew, he had acquired a few acres by purchase in auction, of which he will remain tenant until he has paid up the price in full (S. 15, Colonization of Government Land Act of 1912); but he has been "given" a half-square by the dismissed lambardar after the dismissal in order to enable him to qualify as a lambardar in the Chak.

Apart from this gift, he would not have been qualified for appointment, and even with it, it will be seen that he lacks the usual qualification of personal influence in the estate. He was a stranger to be foisted upon the estate simply in order to satisfy the claim of relationship. There are in the estate others holding original grants who were regarded by the Collector as fit for the post.

We are of opinion that mere relationship should not provide a reason for introducing into a colony village as lambardar a stranger from another tract altogether, especially when that stranger, (except for a gift privately arranged for the purpose) would not have been a landholder in the village.

The lambardar is to be selected from amongst the landholders in the estate, and although cases may occur where the heir to a deceased lambardar may succeed to the lambardari, even though he has not previously lived in the estate, mere relationship should not afford basis for a claim, when the claimant has not inherited the property of the late lambardar.

The first appointments to posts of headmen in colony villages must be somewhat speculative, and where the first holder or his direct descendant proves unsuitable, the post may suitably be taken from the family and given to other colonists in the village. The colony village is apt to lack homogeneity, and it is important to ensure early consolidation of interests amongst the residents; in an old settled village, the heirs to any landholders are usually to be found within the estate, and the hereditary principle in the succession to such posts results in the appointment of one old resident in place of another. In the canal colonies, the result of following hereditary claims, as in the present case, may be different, and the process of consolidation of interests will be retarded by introducing a perfect stranger to the village.

The son of the original lambardar was dismissed for failure to perform his duties satisfactorily; in cases of dismissal, it has been frequently

held that, where the fault is sufficiently serious to justify this step, the family may be deprived of the post; in the colonies, there need be less hesitation in passing over the claims of the family, where the post is not an old one and where the family has failed to produce a satisfactory successor.

We are of opinion that the Collector was correct in selecting the best man from amongst the colonists in the village, and that it was a mistake to consider that the hereditary principle necessitated the introduction of a stranger from another district, who, but for a special gift, would not even have been a landholder in the estate. We, therefore, accept this appeal, set aside the order of the learned Commissioner, and restore that of the Collector, appointing Said, Biloch, as lambardar in place of Falak Sher, dismissed.

Appeal accepted.

LAHORE HIGH COURT.

Appellate

Civil.

No. 96 of 1926. (Decided on 22-5-1930).

Broadway and Currie, JJ.

NIZAM DIN and others

...

..

.. *Appellants*

Versus

MST. WAZIR BEGAM

..

..

.. *Respondent.*

Punjab Tenancy Act, S. 59 (4)—death of occupancy tenant without heirs—right of landlord.

Held, that the interest of the mortgagee can be no greater or last no longer than that of the mortgagor and the mortgagor's interest having come wholly to an end by reason of his death without heirs, the mortgagee's interest ceases with it, even though the mortgage was made with the landlord's knowledge.

Second appeal from the decree of District Judge, Jullundur.

Appellants :—by Mr. Badri Das.

Respondent :—Mr. Zafarulla Khan Chaudhri.

JUDGMENT.

Broadway, J.—On 14th September, 1908, one Mahiya, an occupancy tenant, resident of Dhogri in the tahsil and district of Jullundur, executed a mortgage in favour of one Shahab Din for Rs. 90 *qua* a certain portion of his holding. On 1st September, 1909, the said Mahiya mortgaged another portion of his occupancy holding to Umra for Rs. 99-8-0. and later, on 29th April, 1912, the same land was further mortgaged for a sum of Rs. 400 in all. On 11th June, 1910, Mahiya mortgaged another portion of his holding to Nabi Bakhsh for Rs. 160, and again on 4th June 1915 he executed a mortgage of another portion of his holding in favour of Ali Bakhsh for Rs. 500. On 10th November 1917 this same Mahiya executed a deed in favour of the landlord, Mst. Wazir Begam,

and relinquished his occupancy rights in her favour on payment by her of a sum of Rs. 130. In 1920 Mst. Wazir Begam instituted a suit against the mortgagees above mentioned, claiming possession of the land free from encumbrance. This suit was dismissed on the ground that the mortgages existed so long as Mahiya was alive. On 22nd May 1924, Mahiya departed this life, whereupon, on 17th June 1924, Mst. Wazir Begam instituted the present suit, claiming possession of the land mortgaged as above stated, on the ground that the occupancy tenancy had become extinguished. The trial Court settled the following issues :

1. Does the former suit bar the present suit ?
2. Does the mortgage become extinct by reason of the death of Mahiya without any heir and can the plaintiff claim the land without paying the mortgage-money ?
3. Did plaintiff or her husband acquiesce in the alienation, and if so, what is its effect on the case?
4. Has the plaintiff got a right to sue?
5. To what relief is the plaintiff entitled ?

He finally granted the plaintiff a decree on the basis of *Sher Khan v. Pir Bakhsh* (1) and *Narindar Singh v. Lehna Singh* (2), holding that the former suit was no bar to the present one and whether there had or had not been acquiescence it was immaterial, inasmuch as the occupancy tenancy had become extinct by operation of law and the landlord for that reason become entitled to possession of the land in question free from all encumbrances. Against this decree, the mortgagees preferred an appeal to the District Court. This appeal proved unsuccessful as the learned District Judge considered that *Narindar Singh v. Lehna Singh* (2) concluded the matter. The mortgagees have now come up to this Court in second appeal and on their behalf, Mr. Badri Das has contended that the view taken by the lower Courts is incorrect. He has urged that on the death of Mahiya all that the landlord was entitled to was the right, title and interest of the deceased Mahiya as they existed on the death of Mahiya but as the mortgages were subsisting mortgages up to Mahiya's demise the landlord took the land subject to all these mortgages. In *Narindar Singh v. Lehna Singh* (2) it was held by the Financial Commissioner, the Hon'ble Mr. C.L. Tupper, C.S.I., that the interest of the mortgagee can be no greater or last longer than that of the mortgagor and that the mortgagor's interest having come wholly to an end by reason of his death without heirs, the mortgagee's interest ceased with it, even though the mortgage was made with the landlord's knowledge. This view of the law has not been different from as far as I know and appears to me to be in accordance with the provisions of the Punjab Tenancy Act. S. 59 of that Act deals with the devolution of a right of occupancy and in sub-cl. (4) it has been enacted that if the deceased tenant has left no such person as

(1) 79 P.R. 1878.

(2) 6 P.R. 1901. Rev.

are mentioned in sub-section (1) on whom his right of occupancy may devolve under that sub-section, the right shall be extinguished. It seems to me that all that Mahiya mortgaged was his interest in the land and so long as that interest was in existence that interest was charged with the payment of the moneys borrowed under the mortgages. When that interest came to an end, which it undoubtedly did when he died, there was nothing left to which any charge could attach. The landlord does not take by devolution; he takes possession of the land when the occupancy tenancy becomes extinguished. Under these circumstances, I am of opinion that the view taken by the lower Courts is correct and I would, therefore, dismiss the appeal with costs.

Currie, J.—I agree.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 138 of 1:29-30. (Decided on 18-7-1930.)

H. Calvert, F.C.

Sardar Bahadur Captain LAKHA SINGH and others

Applicants

Versus

CROWN.....*Other Side.*

Punjab Colonization of Government Lands Act V of 1912 (as amended by Punjab Government Act III of 1920), Ss. 24 (b) and 7 and 84 of Punjab Tenancy Act.

Held, that the Financial Commissioner is not concerned on the revision side with matters of discretion or acts of grace and cannot interfere, where there has been no illegality.

Revision against the order of Commissioner, Multan Division.
ORDER.

This is before me on the revision side and the legality of the order of the Colonization Officer is not contested. In the grounds of appeal before the Commissioner, it is admitted that the rent, was not paid and it is not denied that, in default of payment of rent, the Collector has powers to order resumption of the tenancy. On the revision side, I am not concerned with matters of discretion or acts of grace. There was nothing illegal in the order passed and so this application is rejected.

Application rejected

22 PUNJAB CASE-LAW, PART C. [1930].
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 205 of 1929-30. (Decided on 26-10-1930).

Townsend, F.C.

NANAK CHAND

Applicant

Versus

CROWN

Other Side.

Patwaris—not Government servants—their dismissal—Civil Service Rules.

Held, that patwaris are not Government servants, and, therefore, the usual rule that those servants should retire at 60 years of age, if ministerial servants, and at 55, if non-ministerial, does not apply to them; nor do the Civil Services Classification, Control and Appeal Rules apply to them; those rules do not govern the case of any person, for whose appointment and conditions of employment special provision is made by or under any law for the time being in force. Such special provision exists for Patwaris in the rules relating to them made under Ss. 28 and 29 of the Land Revenue Act. The Patwaris, if physically and mentally fit for their work, should be retained in service, whatever their age. Once a man has shown signs that he is obviously failing in any way, he should be retired without hesitation; but till such time he should be kept in service.

ORDER.

Nanak Chand, a patwari of the Shamundri tahsil of Lyallpur, was directed to retire by the Collector with effect from March 30th, 1930. He was then sixty years of age; and, in the previous June, the Tahsildar had reported he was efficient. His age and the wish to make room for junior candidates were the reasons animating the Collector in passing his order. It was not contended that the patwari, whose record was average, was inefficient.

He appealed to the Commissioner against the order of retirement, and that officer has given him a year's extension. Nanak Chand has now come to me on revision, asking me to set aside the Commissioner's order, and direct that he be retained in service so long as he is fit.

There is much misapprehension among Revenue officers of all grades as to the rules governing the retirement of patwaris. They are not, strictly speaking, Government servants; and, therefore, the usual rule, that those servants should retire at 60 years of age, if ministerial servants, and at 55, if non-ministerial, does not apply to them, nor do the Civil Services (Classification, Control and Appeal) Rules apply to them: those rules do not govern the case of any person, for whose appointment and conditions of employment, special provision is made by or under any law for the time being in force. Such special provision exists for patwaris

in the rules relating to them made under Ss. 28 and 29 of the Land Revenue Act. Of those rules, No. 15 is relevant. It runs as follows:—

"When a patwari is permanently incapacitated by disease or infirmity from efficiently performing his duties, he shall be dismissed..." This, and this alone, governs the case: nothing is said regarding the retirement of patwaris owing to a Collector's desire, as in this case, to make room for junior candidates. The rule should be interpreted as meaning that patwaris, if physically and mentally fit for their work, should be retained in service, whatever their age. Once a man has shown signs that he is obviously failing in any way he should be retired without hesitation; but till such time he should be kept in service.

Accordingly I accept the application for revision, and, setting aside the Commissioner's order, direct that Nanak Chand, patwari, be retained in service until the Collector finds that he should, according to the principle now laid down, be retired.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side

Revenue.

No. 36 of 1930-31. (Decided on 28-11-1930).

Townsend, F. C.

DAMAN and others

Applicants

Versus

PHERU SINGH and others

Other side.

Punjab Land Revenue Act, Ss. 113 and 116—Partition proceedings—area near abadi—absence of three share-holders at the time of partition—qura andazi.

Held, that the partition of an area of land near abadi by qura andazi or lots in the absence of the share-holders is unfair, and not binding on parties who were absent.

Case forwarded by the Commissioner of Lahore.

ORDER.

For the reasons given by the Commissioner of Lahore in his reference, dated November 14, I set aside all the proceedings in this petty partition case that have taken place to-date. Proceedings should be initiated *ab initio* again. The partition of the two fields concerned, as under different proprietors, should be dealt with separately, unless all the proprietors agree to their being treated as one unit. The mode of partition should be formed in the presence of all the share-holders, by the Assistant Collector himself. *Qura andazi* should be avoided.

Revision accepted.

The order of the Commissioner, referred to above, is as follows :—

This was an application for partition of two fields. The proprietorship of the two fields is different. Pheru Shah was applicant and Daman and his three brothers (sons of Sawan) were the defendants. An objection was raised on behalf of the sons of Sawan that, as the two fields were not in the same *Khewat*, there should be two applications for partition. Out of Sawan's sons, only one, Padhu, appeared and later on, he agreed to the two fields being partitioned together. The other sons of Sawan were not consulted on this point. When the case was taken up by the Assistant Collector, 1st grade, for framing a mode of partition, Hans Raj was present on behalf of Pheru Shah, while out of the other party only Padhu was present. Hans Raj and Padhu agreed that as to the sides on which each party should get its share, the question should be decided by lots. It may be mentioned here that the parties were not entitled to an equal area, and thus, ordinarily, *qura andazi* should not have been resorted to. It may also be noted that the land is near the village *abadi* and the portion, which adjoins the *abadi*, is much more valuable than the portion at the extreme end. On 15th October 1929, lots were drawn and the side which was near the *abadi* fell in the share to be given to Pheru Shah, and the Assistant Collector sanctioned the mode of partition accordingly. The other sons of Sawan, who were not present on that day, appealed against the order. The other party objected that one Nanku was also an interested party and he was not included in the appeal. As a matter of fact, in the original application for partition Nanku's name was not given on 30th May 1922. At the request of the parties, Nanku's name was added to the parties, though it was not shown on the original application. The Collector ordered that the appeal should be returned and Nanku's name should be shown as one of the respondents. When the appeal was lodged after the addition of the name of Nanku as one of the respondents, the Collector rejected the appeal, holding that the appeal had been barred by time. Considering the circumstances, I am of the opinion that such an order was not justified by merits and the period should have been extended in accordance with S. 5 of the Limitation Act. But leaving this aside, this was a revenue officer's case and efforts should have been made that the mode of partition was a fair and just one. The mode of partition was sanctioned in the absence of three of the shareholders, and the important question as to area near the *abadi* was ordered to be decided by lots, and such an order was not a fair one, particularly to the share-holders who were not present. Therefore, I am of the opinion that proceedings were not carried on with the care that they deserved and that there is no justification to bind down the shareholders to the result of *qura andazi* done in their absence to which they had never agreed. So, I submit the case to the

Financial Commissioners with the recommendations that the partition of the two fields should be proceeded with separately, unless each and every shareholder agrees to the two fields being partitioned as one unit and also that the mode of partition should be framed in the presence of all the share-holders, and, if any of them remains absent, then a fair mode of the partition should be framed by the Assistant Collector himself and *qura andazi* should be avoided. Parties informed.

I have asked the counsel of the parties and they do not wish to appear before the Financial Commissioner and wish to have the case decided in their absence.

LAHORE HIGH COURT.

Appellate

Civil.

No. 1488 of 1926. (Decided on 12-6-1930.)

Tek Chand and Currie, JJ.

SHAM SINGH and others *Appellants*
Versus

AMARJIT SINGH *Respondents.*

Punjab Tenancy Act, S. 77 (3) (d)—Whether defendant related to deceased tenant—jurisdiction of civil Courts.

S. 77 (3) (d) does not apply to a suit by the plaintiff as landlord of certain land lately held by a tenant who died lawaris, alleging that the defendants without title had taken possession of the land. The bar under cl. (d) is applicable to those cases only, in which the relationship of landlord and tenant is admitted and the object of the suit is to determine the nature of the tenancy. A suit, in which the point for decision is not the nature of the tenancy but whether the defendant is related to the deceased tenant, is cognizable by a Civil Court. 22 P.R. 1894; 160 P.R. 1890 Relied.

Second Appeal from decree of District Judge, Jullundur.

Appellant:—by Mr. Bishan Narain.

Respondent:—by Mr. Badri Das.

JUDGMENT

Tek Chand, J.—The plaintiff is admittedly the owner of the land in dispute, which was held by one Bhalla as occupancy tenant under him. Bhalla died many years ago and his widow Mst. Jassi succeeded him as occupancy tenant for life. On Mst. Jassi's death in 1919 the defendants, claiming to be collateral heirs of Bhalla, took possession of the land and got themselves recorded as occupancy tenants under the plaintiff. The plaintiff was a minor at that time. He has now attained majority and has sued for possession, alleging that the defendants were not related to Bhalla deceased, that the land in question was not occupied by the alleged common ancestor, Dharman, and that the defendants were holding the land as trespassers.

The defendants pleaded that they were collaterals of Bhalla and entitled to succeed to the tenancy under S. 59, Tenancy Act. They also urged that the suit was not cognizable by the civil Court under S. 77 Punjab Tenancy Act. The Courts below have found against the defendants on all these points and have decreed the suit.

Before us an attempt was made to contest the findings of the learned District Judge that the defendants were not related to Bhalla deceased and that the alleged common ancestor had never occupied the land. But the findings of fact recorded by the learned District Judge are based on evidence on the record, and cannot be challenged in second appeal.

The only question which requires decision is whether the civil Court had jurisdiction to entertain and try the suit. In support of his contention that the suit was cognizable by revenue Courts only, the learned counsel for the appellants has referred us to Cl. (d), sub-section 3, S. 77, Punjab Tenancy Act, and the proviso to that sub-section. In my opinion these provisions of the law have no application whatever to a case of this kind. Cl. (d), bars the jurisdiction of civil Courts to take cognizance of "suits by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right."

It was held in *Mewa Singh v. Nathu* (1) and has been settled law ever since, that this clause does not apply to a suit by the plaintiff as landlord of certain land lately held by a tenant who died *luwaris* alleging that the defendants without title had taken possession of the land "as it was not a suit by a landlord to prove that a tenant had not a right of occupancy, the plaintiff not alleging or admitting that the defendant was tenant at all, but on the contrary that he was a mere trespasser."

Conversely, it was laid down in *Wazira v. Harjalu* (2) that a suit by a collateral heir of a deceased occupancy tenant to recover possession of his holding from the landlord on the ground of inheritance is quite distinct from a suit covered by this and other sections of the Tenancy Act, and is cognizable by a civil Court. It is obvious that the bar under cl. (d) is applicable to those cases only, in which the relationship of landlord and tenant is admitted and the object of the suit is to determine the nature of the tenancy, *i. e.* whether the status of the tenant falls under Ss. 5, 6, 7 or 8 of the Act. In a suit like the one before us, the point for decision is not the nature of the tenancy, but whether the defendant is related to the deceased tenant, and, if so, whether their common ancestor had occupied the land. If these questions of fact are established, the claimant *ipso facto* succeeds to the occupancy tenancy. But if they are decided against him, he is not a tenant at all.

This position has not been seriously questioned before us and counsel.

(1) 22 P.R. 1894.

sel has not attempted to argue that *Wazira v. Harjalu* (2) and *Mewa Singh v. Nathu* (1) were wrongly decided. He has argued that the proviso to sub-section (3), which was enacted by Punjab Act 3 of 1912, has made a change in the law. A reference to the wording of the proviso, however, shows that all it lays down is that where in a suit cognizable by and instituted in a civil Court it becomes necessary to decide any matter which can under the sub-section be heard and determined only by a Revenue Court, the civil Court shall endorse upon the plaint the nature of the matter for decision and return the plaint for presentation to the Collector. The practical effect of the proviso is that, whereas before its enactment civil Courts were prohibited from trying those suits only in which the question raised in the plaint *ex facie* fell within one or other of the clauses of sub-section 3, S. 77, their jurisdiction is now barred in those cases also in which on the averments in the plaint the suit is properly triable by a civil Court, but the defendant's pleas raise a question which, under this sub-section, is to be determined by revenue Courts only. On such a plea being raised and the Court finding that it has become necessary to decide it, it must stay its hands and return the plaint for presentation to the revenue Court. In the case before us, neither the plaint nor the pleas raise a question falling within Cl. (d) or any other clause of sub-section 3, S. 77; and, therefore, the proviso does not come into operation.

The question of the applicability of the proviso to a case like this arose directly in *Ghulam v. Jowala* (3), where Shah Din, J. after discussing the previous cases bearing on the point, held that a suit of this kind was cognizable by civil Courts. The same view has been taken by Broadway and Fiorde, JJ., in *Taikaran v. Nathu Ram* (4). The only case, in which a contrary view has been expressed, is a Single Bench decision of Abdul Raoof, J., in *Parabh Dayal v. Mst. Radho* (5). A perusal of his judgment shows, however, that the learned Judge was inclined to agree with the conclusion of Shah Din, J., but he felt himself bound by a previous Division Bench decision of the Chief Court reported as *Wadhawa v. Mst. Hassi* (6). I have examined that ruling and with all respect to the learned Judge, feel constrained to say, that it was clearly distinguishable from the case before him. In *Wadhawa v. Mst. Hassi* (6) certain tenants had been declared to be *panahi* or "protected" for a term of years before the enactment of the Tenancy Act:

(2) 160 P. R. 1890.

(3) 103 P. R. 1918.

(4) A. I. R. 1926 Lah. 338.

(5) 75 I. C. 818.

(6) 73 P. R. 1915.

of 1868 and on the strength of that declaration they claimed to have been occupancy tenants under S. 6, Act 16 of 1887. It is clear that the question for determination by the Division Bench related to the nature of the tenure of a person who admittedly held under another, and such a question obviously fell within Cl. (d), sub-section (3), S. 77 and, therefore, within the exclusive jurisdiction of revenue Courts. I have no doubt that the law was correctly laid down by Shah Din, J., in *Ghulam v. Jowala* (3) and with his reasoning and conclusion I venture to express my whole-hearted and respectful concurrence. I hold, therefore, that the suit was rightly tried in the civil Courts.

For the foregoing reasons, I would dismiss the appeal with costs here and below.

Currie, J.—I concur.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side

Revenue.

No. 155 of 1928-29. (Decided on 5-12-1930).

Townsend, F.C.

MANZUR ALI

.. Applicant

Versus

AMIR ALI KHAN and others

... Other Side.

Punjab Land Revenue Act, 37—mutation procedure—nature of.

Held that the mutation procedure must be summary.

Custom—riwaj-i-am—married daughters v. Collaterals.

Where a Riwaj-i-am ran as follows "Married daughters do not inherit in presence of collaterals. This is the general rule, but under the influence of judicial decision some people admit that daughter succeeds in preference to collaterals of the 5th or remotest degrees"

Held that daughter's sons ought to be given preference to collaterals and mutation effected in their names.

Revision from the order of the Commissioner of Lahore Division.

ORDER.

Lelu and others v. Ram Chand and others (1) *Raj Kaur v. Talok Singh* (2), *Mst. Fatima Bibi v. Shah Nawaz* (3), *Muhammad Hussain v. Sheru* (4) are referred to by Mr. Arjan Deo on the point whether the *Riwaj-i-am* applies to both ancestral and self-acquired land. This is the first time the point has been raised. I do not think there is much in it.

(1) 23 P.R. 1916.

(2) 38 P.R. 1916.

(3) 2 Lah. 98.

(4) 20 I.C. 274.

But more relevant is the concluding part of the reply to question 47 of the *Riwaj-i-am* of Sialkot, as attested in the 1916 settlement; the land in question was then in that district. It runs as follows :—

“ Married daughters do not inherit in the presence of collaterals. This is the general rule, but under the influence of judicial decision some people admit that daughters succeed in preference to collaterals of the 5th or remote degrees. ”

Now the mutation procedure is, and must be summary. I think, civil litigation is certain to follow in this case. But so far as the present procedure goes, I find myself in agreement with the Collector and not with the Commissioner. The latter order, I note, is muddled; instead of the word “ dismiss ” in the penultimate line of his order, he meant to say “ accept. ”

So I accept this revision application, and, cancelling the Commissioner's order, restore that of the Collector.

Parties may pay their own costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJ.B.

Revision Side.

Revenue.

No. 222 of 1929-30. (Decided on 5-12-1930).

Townsend, F. C.

CHANAN SINGH and others

Applicants

Versus

BISHEN SINGH and others

Other side.

Punjab Land Revenue Act, S. 16—no appeal under S. 14 of Land Revenue Act possible—grave miscarriage of justice—Financial Commissioner to interfere in revision.

Where no appeal was lodged and no appeal was possible on account of provisions of S. 14 of Land Revenue Act, the Financial Commissioner must interfere in revision when there is grave miscarriage of justice.

Case forwarded by the Collector, Jullundhar District, through the Commissioner.

ORDER OF REFERENCE.

This case has been argued before me by counsel on both sides. On behalf of the applicant, it is urged that a reference should be made to the Financial Commissioner in accordance with the ruling published in *Abdul Haq v. Umar Din* (1). The grounds urged in support of this course are as under:—

(1) 1925 L. L. T. 4 : 1925 P.C.L. 7.

- (1) that no appeal was lodged and that no appeal can now be lodged on account of the provisions of S. 14 of the Land Revenue Act,
- (2) that a grave miscarriage of justice has taken place and and it can only be set right if the Financial Commissioner permits the entertaining of this application.

FACTS OF THE CASE.

There are two parties to the suit. Bishen Singh on one side, and Basant Singh, Punan Singh, and Chanan Singh etc. on the other. Both parties hold land in village Pharala. Bishen Singh is the owner of 12 kanals of land, comprising khasra Nos. 4029 and 7563-4000. 1. Punan Singh, Basant Singh and Chanan Singh etc., also own 12 kanals of land, comprising of khasra Nos. 3100, 3163, 3103, 3084, 3098, and 3130. Bishen Singh exchanged his 12 kanals as mentioned above, with the other party without the consent or knowledge of Chanan Singh, Phagan Singh and Bhagat Singh who are owners of 1-3rd of field No. 3100 etc., mentioned above. Quite naturally Chanan Singh, Phagan Singh and Bhagat Singh object to this exchange. They were never present and they had not furnished any answer to the interrogatories issued. The Assistant Collector gave effect to this exchange which came into existence by an oral agreement of 17th August 1929, without even verifying the fact that the the active agents of the second party, namely, Basant Singh and Punan Singh are not even in Hissedari kasht of the whole. As a matter of fact, the appellants hold 5 kanals out of this 12 kanals of land separately and Basant Singh and Punan Singh hold 7 kanals separately. The exchange entered in favour of Bishen Singh, therefore, in so far as the five kanals held by Chanan Singh etc., are concerned, is absolutely without any justification. Chanan Singh etc, never consented to this exchange and the Assistant Collector had no ground to assume that the interests of Basant Singh and Punan Singh were not inimical to those of Chanan Singh, Phagan Singh and Bhagat Singh. The transfer, therefore, must be set aside. It is obvious that I cannot entertain this application unless the Financial Commissioner's permission is obtained for re-opening the whole question.

My view is that the transfer of the rights of Chanan Singh, Phagan Singh and Bhagat Singh without their knowledge or consent, constitutes an element, justifying the Financial Commissioner's interference in the manner prayed for by the counsel of the applicant. The file is submitted for orders,

ORDER.

Townsend, F. C.—For the reasons given by the Collector in his reference, dated September 18, 1930, I cancel the mutation of Naib-Tahsildar

dated 21st February 1930, referred to therein, and order that the previous entries as to the ownership of this land should remain.

Order accordingly.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No 149 of 1928-29. (Decided on 8-12-1930).

Townsend, F. C.

SURAIN SINGH

Applicant

Versus

CROWN

Other Side.

Lambardar—succession—failure of father to produce a witness in a criminal case—effect of.

Held, that the failure to produce a witness in S. 498, I.P.C. case, for whom applicant's father had given security, is not sufficient warranty for his non-appointment as Lambardar in succession to his father.

Revision from the order of the Commissioner of Lahore Division.

ORDER.

I don't think that the failure to produce a witness in a S. 498 I.P.C. case, for whom applicant's father had given security, is sufficient warrant for his non-appointment as lambardar in succession to his father. The latter was dismissed for failing to produce the witness, and his security money was confiscated. I think that is sufficient punishment. Accordingly, I accept the application for revision, and, cancelling Collector's and Commissioner's orders, appoint Surain Singh, applicant, lambardar, in place of his father, Gurdit Singh dismissed:

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No 68 of 1928-29. (Decided on 11-12-1930.)

Townsend, F. C.

MIAN RAJINDAR SINGH

Appellant

Versus

PANDIT NARAIN CHAND

Respondent.

Zaildar—appointment—candidate—honorary magistrate.

Held, that a candidate is an honorary Magistrate is no bar to his appointment as a Zaildar.

Appeal from the order of the Commissioner of Jullundur Division.

PUNJAB CASE-LAW, PART C. [1930]

ORDER.

I wish that in all *Zaildari* cases the contest lay between two such good men as in this case.

The facts are given fully in the Collector's and Commissioner's orders. The only reason that prevented the Collector appointing Pandit Narain Chand Zaildar, was that he was an Honorary Magistrate. I agree with the Commissioner that the reason is insufficient. Were I to agree with the Collector, my ruling might well have the lamentable result that in future no Honorary Magistrate would ever become a zaildar. This would, I consider, be an impossible position. Every case must be decided on its merits.

Accordingly, I reject the appeal. No costs.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

No. 180 of 1928, 1929. (Decided on 16-12-1930).

LAL SINGH and others

Versus

Applicants

CROWN

Other Side.

**Northern India Canal and Drainage Act, S. 33—cut from Raj Bah—
penalty.**

Held, that S. 33 is not applicable to the case of a cut made from a Rajbah maintained by the Government.

Revision from the order of the Commissioner of Lahore
Division.

ORDER.

I greatly regret that I must accept this application for revision. The punishment has been imposed under S. 33 of the Canal Act, but it only speaks of water courses, which are defined in S. 3 (2) of the Act. But this cut was made from a *Rajbah*, maintained by Government, and a very different thing from a water course. There is an obvious *lacuna* in the Act on this point.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 129 of 1929-30. (Decided on 12-12-1930).

Townsend, F. C.

MST. DILLO and others

Versus

Appellants

KAPURA

Other side.

Punjab Tenancy Act, S. 84—failure to write judgment according to law—interference on revision.

Where the judgment of the lower Court did not comply with the requirements of law, inasmuch as it did not discuss each of the grounds of appeal, held, that the judgment should be set aside on revision, if the matter is not clear.

Case forwarded by the Commissioner of Jullundur Division, with his recommendation, for the orders of the Financial Commissioner.

REFERENCE ORDER.

In the course of partition proceedings, the present plaintiff, Kapura brought a suit for declaration that he has occupancy rights under S. 8 in 16 *kanals 4 marlas* of *shamilat* land in Toka Sahlwin, Hamirpur Tahsil. His suit is contested by the proprietors of the village. In the revenue record the plaintiff is entered as B (4) class tenant paying 2-5ths *Batai*. The plaintiff alleges that one Parju *Chamar*, who occupied the land in 1868, was his grandfather and that Parju though not entered as occupancy tenant in the revenue record was entitled to occupancy rights. The defendants plead that it is doubtful who the original tenant of the land was, as he is at one place called Parju *Chamar*, while at another time by a somewhat different name classed as *Hajjam*. They add that this occupant whoever he was, is not proved to be the grandfather of the plaintiff, that subsequent to Parju other tenants have cultivated the land, in fact the proprietors themselves cultivated for a time, that on more than one occasion decrees for rent have been obtained against the plaintiff and in these suits he did not claim to be occupancy tenant.

The Revenue Assistant who tried the case fixed only two issues :—

- (1) Whether the suit was in time ? and,
- (2) Whether the plaintiff was an occupancy tenant under S. 8 ?

The objection with regard to limitation was dropped leaving only the second issue. From the allegations and the pleas it is evident that the case required the framing of other issues on the points in dispute. However, on issue No. 2 the Revenue Assistant decided that the plaintiff is an occupancy tenant under S. 8, though he does not find on what grounds he has acquired the rights under this section.

The defendants appealed to the Collector on the following grounds :—

- (1) That the plaintiff's ancestors never cultivated the land and that he is not the successor of the original cultivator.
- (2) That there is no mention anywhere in the revenue record of Gokal, father of the plaintiff.
- (3) That Parju (who, plaintiff states, is his grandfather) was not the original cultivator of the land and never obtained occupancy rights.
- (4) That the residential houses on the land were built not by the tenants but by the proprietors, who gave them to the tenants for their use.

In his judgment the Collector deals with no other point except the question of the identity of Parju Chamar who is shown as a tenant in 1868. Even that point is not at all discussed by him. The judgment is an exceedingly brief one and it is impossible to say from it whether the Collector gave any consideration at all to the case. Seeing that the Revenue Assistant himself failed to deal with some important pleas raised by the defendants, it was incumbent on the appellate Court to consider those points which were made grounds of appeal.

For the reason that the case was not properly tried in the first court and that it has been very inadequately dealt with in appeal, I refer the order of the Collector to the Financial Commissioner for revision and recommend that it should be returned to be tried *de novo*. Neither party desires to be presented before the Financial Commissioner.

Note :—The delay in the disposal of this application for revision is due to the fact that it was fixed for hearing in Kangra district but could not be heard there.

ORDER.

This case has been sent to me for exercise of my revisional powers with the Commissioner's reference, dated August 21, 1930, for the reason given therein. I have heard counsel for each side. I agree with the Commissioner that the Collector's order, dated 23rd July 1929, is exiguous to a degree, and cannot be allowed to remain. It does not comply with the requirements of the law, in that it does not discuss each of the grounds of appeal, and it is to me doubtful, as it was to Commissioner, whether [Collector applied his mind to the case to the extent requisite.

For the reasons given by the Commissioner, retrial *de novo* is necessary. So agreeing with him I accept this application, and, setting aside all the orders that have been passed so far in this case, direct that it should be entirely retried *ab initio* by any qualified Assistant Collector of the Kangra District. Application accepted.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

No. 229 of 1927-28. (Decided on 16-12-1930).

Revenue.

Townsend, F. C.

GAJJAN SINGH

Versus

Applicant

CROWN

Other side.

Sufedposhi—appointment—vacancy in the zail.

Held, that under the rules a sufedposhi is generally filled by a resident of the zail in which the vacancy occurs but they may be relaxed under special circumstances.

Petition for revision from the order of the Commissioner of Ambala Division.

ORDER.

Gajjan Singh and Sheo Karan present.

This is an unusual case. I can see no reason not to accept the concurrent finding of both Mr. Chandra, the Collector, and Mr. Irving, the Commissioner, that the charges which led to the dismissal of Gajjan Singh from his sufedposhi and lambardari are false. I, therefore, order his re-instatement in both appointments.

But this would involve some hardship on Sheokaran, who was appointed Sufedposh in his place, and is apparently doing well. Fortunately a solution to that difficulty offers itself in the fact that another Sufedposhi in the Sirsa tahsil recently became vacant owing to the death of Ratti Ram of Bakriwala. I direct that the Sufedposhi thus vacated be given to Sheokaran. I am well aware that in ordering this I may be disregarding the rule under which a Sufedposhi is generally filled by a resident of the zail in which the vacancy occurs, but in the circumstances of the case this is, I think, justified. Chautala, where Sheokaran lives has recently come into regrettable publicity owing to political activities there.

Gajjan Singh will, of course, be reinstated in the place and grade he formerly occupied as Sufedposh.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 53 of 1928-29.

Calvert, F.C.

SHADI

Applicant

Versus

CROWN

Other side

Punjab Colonization of Government Land Act, S. 24—issue of notice—statutory obligation—resumption.

Where the Collector ordered resumption of the grant of a square of land without issuing notice under S. 24, held, that the order should be set aside as the issue of notice was a statutory obligation.

Revision from the order of the Collector, Lyallpur.

ORDER.

It appears that the Collector omitted to issue the notice required by S. 24 of the Colonization of Government Lands Act. The issue of notice was a statutory obligation. The defect was remediable. The order was therefore not one which should have been passed until notice

had been issued. I set aside the order of the Collector and return the case for disposal according to law.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 90 of 1929—30.

Calvert, F. C.

MUHAMMAD IQBAL

...

...

...

.. Applicant

Versus

MUHAMMAD BAKHSI

...

...

...

... Other side.

Punjab Tenancy Act, S. 84—revision—grant of Lambardari square refused—discretion.

Held, that the granting of Lambardari square being entirely discretionary, deprivation of it was not a sufficient reason for interference, all the more where the deprivation was intended as a punishment.

(ii) Government Tenancy (Punjab) Act, S. 4—minor—succession to Lambardari square—inapplicability.

Held, that succession to Lambardari square is specially taken out of the scope of the Colonization of Government Lands Act by S. 4 thereof and therefore a minor has no legal claim to the square.

Revision against the order of the Commissioner, Multan Division.

ORDER.

In an order on a Lambardari case, the Commissioner of Multan directed that the *lambardari* square be withheld until the minor (who was appointed) becomes of age. The granting of a *lambardari* square is entirely discretionary. Succession to *lambardari* square is specially taken out of the scope of the Colonization of Government Lands Act by S. 4 thereof, and therefore the minor has no legal claim to the square.

Deprivation was intended as a punishment and I see no sufficient reason to interfere.

The next point taken is that the direction to appoint as *sarbarah* someone "who is not likely to be under the influence of the dismissed Lambardar" would be detrimental to the minor's interest. The Commissioner has not definitely ruled out all relations; he merely pointed out the inadvisability of appointing one.

The direction is reasonable and I agree with it.

I therefore reject this application.

Application rejected.

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MST. SATTO v. WISHAN DAS
IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

No. 6 of 1928-29. (Decided on 24-4-1930.)

Townsend, F.C.

Revenue.

MST. SATTO

Versus

Applicant

WISHAN DAS and others

Other side.

**Punjab Alienation of Land Act, S. 13—Notification of 1910—
has not retrospective effect.**

Where a certain land was outside the municipal limits when it was originally given on lease, Notification of Government in 1910 including the same within the municipal limits could not operate retrospectively so as to affect the application of the Land Alienation Act to it.

Revision from the order of the Commissioner of Multan Division.
ORDER.

Applicant heard. Respondent absent. Duly informed. Case *ex parte*.

The case has been wrongly dealt with both by Collector and Commissioner.

The Collector's order dated 20th January 1928, 'shows extreme ignorance of the Land Alienation Act particularly S. 13 which obviously applied. Nor can the Commissioner's order dated 22nd November 1928, stand. The Notification issued by the Punjab Government in 1910 by which the land involved was included within the limits of Muzaffargarh Municipality cannot affect the application of the Land Alienation Act to it as it was outside those limits when this land was given on lease originally by applicant. It would obviously be grossly inequitable to applicant to hold that the Notification of 1910 had, as it were, retrospective effect.

I, therefore, accept the application for revision, cancel all the proceedings to date and send the case back to be disposed of *de novo* by the Collector of Muzaffargarh himself, according to S. 13 of the Land Alienation Act, which obviously applies to this case.

No order as to costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

No. 86 of 1928-29. (Decided on 10-10-1930).

Calvert, F. C.

Revenue.

MOHAN LAL

Versus

Appellant

CROWN

Respondent.

Punjab Tenancy Act, S. 38—lease of land—failure to cultivate—resumption.

Where an old lease of land contained no specific condition requiring the land to be cultivated, and carried no right to the acquisition of occupancy rights by the tenant, failure to cultivate the land continuously through the period of lease was a sufficient cause, for resumption of the land in view of the fact that cultivation is an almost inseparable attribute of a tenancy and even an occupancy tenant loses all his rights if he fails to cultivate for even one year.

Appeal from the order of the Commissioner, Multan Division.

ORDER.

This case deals with an old lease of land and it appears that throughout the period of the lease the land has not been cultivated owing to continuous failure to bring the land under cultivation for a long period, the land was resumed. It appears that the lease contained no specific condition requiring the land to be cultivated, but cultivation is an almost inseparable attribute of a tenancy and indeed an occupancy tenant only lose all his rights if he fails to cultivate for even one year (S. 38, Tenancy Act). This lease carried with it no right to the acquisition of occupancy rights and so there is even less reason for hesitancy in this case.

I reject the appeal.

Appeal rejected

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue.

(Decided on 24-5-1930).

Townsend, F.C.

CH. QASIM KHAN

Applicant

Versus

CH. DIAL SINGH

Other side.

Punjab Land Revenue Act, S. 16—Zaildari case—Punjab Land Revenue Rule cl. (d)—hereditary claim—failure to discuss all the grounds of appeal—interference on revision justified.

Land Revenue Rule 5 distinctly lays down that in the appointment of Zaildar regard shall not be had to any alleged hereditary claim.

A person who hails from a predominant community and whose father besides being a good soldier gave a large number of recruits to the Army may be preferred to one whose family provided zaildars for two generations. Although, where a Collector and a Commissioner have arrived at concurrent findings in a zaildari case, interference on the revisional side should be very rare, yet where the Commissioner has failed to discuss, even in the more general terms, all the grounds of appeal, interference on revision is more justifiable than in an ordinary case.

Revision from the order of the Commissioner of Lahore Division.
ORDER.

In this *zaildari* case the Collector of Sialkot appointed Chaudhri Dial Singh, a Minhas Rajput, *Zaildar* in place of his grand-father deceased. The *zaildari* had indeed been in the family for two generations as Chaudhri Dial Singh's great grand-father was also *Zaildar*. There was only one other possible candidate, Chaudhri Qasim Khan, Salaria Rajput ; who, the Collector's order having been upheld on appeal by the Commissioner in his order dated 20th September 1929, has now come to me on revision. I have to-day heard counsel at length for each party.

The Collector appears to me to have, to a great extent, disregarded the provisions of Land Revenue Rule 5 which distinctly lays down that "in the appointment of *Zaildars* regard shall not be had to any alleged hereditary claim" even read with the judgment of Sir Lewis Tupper, Financial Commissioner, found in *Surain Singh v. Jagat Singh* (1). He lay far too much stress on the undesirability of transferring the *zaildari* to a family other than that of respondent in which it had been, as I have already shown, for two generations. As regards the other matters laid down in Land Revenue Rule 5 to which attention should be paid in the appointment of *Zaildars* the applicant is to my mind in a much stronger position than is the respondent. To mention only one point, his father Hashim Khan was a most distinguished soldier : and I actually found in respondent's book. I emphasize the word respondent—an entry by Mr. Osborne, the Deputy Commissioner of 1919, to the effect that "most of the recruits that were forthcoming from *zail* were due to the efforts of Hashim Khan." Again there are 30 Muhammadans and only 16 Hindu villages in the *zail* : there are 33 Salehria villages and 16 Minhas villages. Much weight should in my opinion be attached to this point ; see clause (d) in Land Revenue Rule 5 already referred to.

It is of course true that where a Collector and a Commissioner have arrived at concurrent findings in a case of this nature interference on the revisional side should be very rare. But in this case so oxigous is the Commissioner's order, and so marked his failure to discuss even in the most general terms, all the grounds of appeal, I consider that interference on revision is more justifiable than in ordinary cases.

For these reasons I accept this application for revision, and, cancelling the order of the Collector dated 12th March 1923, and of the Commissioner dated 20th September 1929 appoint the applicant, Ch. Qasim Khan *Zaildar* in place of Ch. Dial Singh respondent. But Ch. Qasim Khan must go, of course, into the lowest grade of *Zaildars*. I can see no reason whatever to put him in the first grade, as Collector
(1) 5 P. R. 1902 Rev.

thought fit, to put respondent in his order appointing him.

Parties may pay their own costs before me.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 31 of 1928-29. (Decided on 19-5-1930)

Townsend, F. C.

SUBHA *alias* BEHARI and others

Applicants

Versus

DASAUNDHA SINGH

Other side.

Punjab Tenancy Act. S. 84—Appeal prima facie time-barred—no order of extension under S. 5, Limitation Act—failure to regard limitation—revision—loss of papers—absence of affidavit to that effect.

Where the appeal before the Commissioner was clearly time-barred and he passed no order under S. 5, Limitation Act extending limitation nor did he mention the matter in his judgment, held, that limitation must be regarded carefully and failure to do so is a "material irregularity" justifying interference in revision. Held, also, that where "loss of papers" is alleged so as to obtain an extension under S. 5 of the Limitation Act, filing of an affidavit to that effect is necessary

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

The appeal before the Commissioner was clearly time-barred, and the Commissioner passed no order under S. 5 of the Limitation Act extending limitation, nor did he mention the matter in his judgment. Limitation must be regarded carefully in these matters and there is ample authority for holding that failure to do so is a "material irregularity" justifying interference in revision. It is true that Dasaundha Singh, appellant in Commissioner's Court, gave a statement there to the effect that he had "lost his papers"; but he filed no affidavit to that effect, and there are many findings of various High Courts that the filing of such an affidavit is necessary before S. 5 of the Limitation Act can be invoked.

Nor is there any reason justifying non-appliance of the strict letter of the law in this case. Dasaundha Singh is a Lambardar; his son is Kapur Singh, a pleader, who appears before me in this case. It is not as if he was an illiterate Chamar, to whom indulgence might properly be shown. He must suffer the consequence of his laches.

I accept the application for revision and cancelling the Commissioner's order restore that of the Collector. Parties may pay their own costs in my Court.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Appellate Side.

Revenue.

No. 49 of 1928-29. (Decided on 25-4-1930).

Townsend, F. C.

TARA CHAND and another

Appellants

Versus

CHARAN LAL and others

Respondents.

Punjab Land Revenue Act, S. 37—Entry in jama bandi—Standing Order 23 paragraph 2, sub-paragraph (VIII).

Held, that a collateral mortgagee cannot be entered even in the remarks column of a jamabandi, without a mutation.

Appeal from the order of the Commissioner of Jullundur Division.

ORDER.

The case is not so obscure as it looks. The Commissioner in his order overlooked the instructions conveyed in sub-paragraph (viii) of paragraph 2 of Standing Order 23. A collateral mortgagee cannot be entered even in the remarks column of a *jambandi*, without a mutation.

I, therefore, accept the appeal, and in so far that I order that the mutation of the mortgage ordered to be made by Mr. Dodd, Collector on 21st October 1926, which Commissioner in his order of 10th October 1928; ordered should be cancelled, shall remain. The fact of the mortgage with its date shall be entered in the remarks column, as Commissioner directed. No costs.

*Appeal accepted.*IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Appellate Side.

Revenue.

No. 75 of 1929-30. (Decided on 22-10-1930).

Calvert, F.G.

AJIT SINGH

Appellant

Versus

TEJA SINGH

Respondent.

Lambardar—Collector's Choice—Chaks belonging to Government.

The rules clearly give the Collector a free hand in selecting Lambardars for Chaks which continue to be largely the property of Government. The hereditary principle affords a simple guide where comparative merits are approximately equal or unimportant, but until proprietary rights are acquired it must not be allowed to deprive the Collector of a clear discretion.

Appeal from an order of the Commissioner, Multan Division.

ORDER.

Briefly, a *Lambardari* having become vacant owing to the condition

requiring the former Lambardar to reside on a new grant, the Collector appointed his son chiefly apparently because he was "inclined to think that hereditary claims should be held to apply with some considerable, if not with full, force." The learned Commissioner following new decisions of the Financial Commissioners held that there was no hereditary right to the succession, and proceeded to appoint on his merits the candidate whom he considered to be the most suitable. The learned Commissioner was clearly correct.

The rules clearly give the Collector a free hand in selecting Lambardars for chaks which continue to be largely the property of Government. The hereditary principle affords a simple guide where comparative merits are approximately equal or unimportant, but until proprietary rights are acquired it must not be allowed to deprive the Collector of a clear discretion. I reject this appeal.

Appeal rejected.

CURRENT

Punjab Case-Law

PART C.

Revenue Rulings

1931.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 52 of 1928-29. (Decided on 19-1-1931).

Townsend, F.C.

SADHU RAM and another

Applicants.

Versus

MIRI MAL

Respondent

**Punjab Tenancy Act, S. 84 (5) Revisional powers-exercise of—
miscarriage of justice.**

Held that interference on revision is justified when a failure to interfere would result in a gross miscarriage of justice. 5 P. R. 1908 (Rev.) 1.P.R. 1911, (Rev.) 1.P.R. of 1914 (Rev.) followed.

Case forwarded by the Commissioner of the Ambala Division for consideration whether the Financial Commissioners should exercise their revisional powers, as neither Court had considered at all whether Miri Mal could sue for rent not paid to Bakhshish Singh.

ORDER.

One Bakhshish Singh, a *Jat*, leased a very small area of land (15 biswas) to Prabhu Dial a *bania*, for twenty years, from April 1st 1921, for an annual rent of Rs. 5 a year, payable before October 1 each year. The deed was duly registered.

Bakhshish Singh exchanged the land for other with Miri Mal, a *bania*, and mutation was sanctioned on March 2nd 1923. No written deed of exchange was entered into: obviously no great importance was attached to the transaction which was duly sanctioned by the Deputy Commissioner under the Land Alienation Act. On March 28th 1924, notice of the transfer was given to Prabhu Dial. On March 26th 1926, he sublet half the land for Rs. 60 a year to one Bishambar Das and his brother. The date is important: as on May 7th 1926 Miri Mal brought a case for ejectment for non-payment of rent against the sons of Prabhu Dial and the sub-tenants.

After various vicissitudes a decree for ejectment owing to non-payment of rent was given against the defendants by the Assistant Collector, first grade, and the order was upheld on appeal by the Collector. Both courts held that the defendants had paid no rent for the three years from April 1st 1922 to March 31st 1925. The Commissioner has forwarded the case to me for consideration whether I should not exercise my revisional powers, as neither Court considered at all the point whether Miri Mal could sue for rent not paid to Bakhshish Singh, from whom he had acquired the land. The Commissioner had obviously grave doubts on the matter.

I have no doubt whatever, and this despite the definition of the term landlord in section 6 (4) of the Tenancy Act. The mutation proceedings of March 2nd 1923 say nothing whatever of any arrears of rent due to Bakhshish Singh. Did they do so the case would be different: but they do not. The rent was very small: and it is in no way surprising that the defendants kept no very accurate records of their payments of it, nor troubled to get any receipt for them. Obviously what really happened was that Miri Mal, on learning that half the land was sublet for Rs. 60 a year began to think how he could get the land back; that done, he would sublet it for himself. And he could of course only sue for non-payment to him of the rent after March 28th 1924: when notice of the exchange was given to the tenants. A money order for the amount Rs. 5 was sent to him on September 6th 1924, which he refused.

So, were I an Appellate Court, I should at once accept the appeal, and cancel the decree given against the tenants. But two Revenue Courts have agreed in their views: so I can only interfere, if I interfere at all, in revision. And my powers to do so are limited by S. 115 of the Civil Procedure Code. Has any "material irregularity" occurred in this case justifying interference with the concurrent findings of two Courts? Now my predecessors have held [see: Jaimal Singh v. Sher Khan (1), Makhan Singh v. Nanda Singh (2), and Mahan Singh v. Narain Singh (3)] that interference on revision is justified when a failure to interfere would result in a miscarriage of justice. I consider that if the orders of the lower Courts are allowed to stand, there will be an undoubted and gross miscarriage of justice. I, therefore, accept the application for revision, and, reversing the orders of the lower Courts, dismiss plaintiff's suit for ejectment. The plaintiff must pay the defendants' costs throughout.

Revision accepted.

(1) 5 P. R. 1903. (Rev).

(2) 1 P. R. 1911. (Rev).

(3) 1 P. R. 1914. (Rev).

IN THE COURT OF FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 72 of 1928-29. (Decided on 20-1-1931).

Townsend, F. C.

ABDULLAH

Applicant

Versus

RAM DYAL and others.

Respondents.

Punjab Tenancy Act, S. 80—Second appeal—decree of trial Court—modification by Appellate Court in favour of the appellant—competency of second appeal.

Where the first Appellate Court modified the decree of the trial Court in favour of the appellant decree-holder, held, that the appellants could not prefer a further appeal from the order of the first Appellate Court. 6 L. L. T. 37 foll.

Punjab Tenancy Act. S. 84—remand without hearing—interference on revision.

Held, that it is irregular on the part of a Commissioner to remand a case without hearing the respondent, and justifies interference on revision.

Revision from an order of the Commissioner of Ambala Division.

ORDER.

I must accept this application for revision. The first Appellate Court modified the order of the trial Court in favour of the landlords respondents 1 and 2 in my Court. They filed a further appeal to the Commissioner, who entertained it as such. But my predecessor, Mr. King, held in *Rai Faiz Muhammad Khan v. Crown* (1) that in such cases no further appeal lies. With that view I see no reason to disagree.

The Commissioner also after hearing only the landlords passed the order of remand dated 27th April 1929, against which the present application is filed with me without hearing, or even issuing any notice, to the tenants. This was of course, irregular, and, is admitted to be such by the landlords' counsel.

On the merits I think the Collector right. The landlords' counsel admits before me that the petitioner and his cousin Saidullah have been occupancy tenants of this land for long. The whole point for decision really is, as the Commissioner said, whether the occupancy rights were extinguished or not. But I am not a Court of appeal in this Court: I am acting as a court of revision, and as such I am bound by the provisions of section 115 of the Civil Procedure Code. There is nothing in the present case to bring it within the somewhat strict provisions of that section, so far as the Collector's order goes.

I therefore accept this application for the revision of the Commissioner's order dated 27th April 1929, and restore the Collector's order dated 21st January 1929.

No costs.

Revision Accepted.

(1) 6 L. L. T. 37.

PUNJAB CASE-LAW, PART C [1931]

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 89 of 1928-29. (Decided on 23-1-1931).

Townsend. F. C.

ALLAH DAD SHAH

Appellant

Versus

MOHAMMAD

Respondent.

—Lambardar—appointment of—hereditary principle—departure from
—advisability.

Held that importance must be attached in lambardari cases under rule XVII (ii) under the Land Revenue Act to hereditary principle and that departure from such principle should be as rare as possible.

Appeal from an order of the Commissioner of the Multan Division.

ORDER.

The case is one that allows for difference of opinion. The Collector, weary of the failures (for various reasons) as *lambardars* of the other members of the respondent's family, and for other reasons, made a new departure, and left that family altogether in the present appointment. The Commissioner discusses the Collector's reasons for that departure and finds them not justified; and rightly points out the importance that must be attached in lambardari cases under rule XVII (ii) under the Land Revenue Act to the hereditary principle.

I think on the whole, that the Commissioner is right in not departing from that principle in this case, and reject the appeal. No costs.

As a minor point I note that the Commissioner appointed the respondent as Lambardar on probation for one year from June 15, 1929. Respondent tells me that no orders have yet been passed on this point either confirming him as Lambardar or extending his period of probation. Probably orders were held up pending decision of this appeal. But as it has now been decided, the Collector Mr. Bourne, should, before he goes on leave, decide the point whether respondent should be confirmed a Lambardar forthwith, or remain on another period of probation. The matter is, of course, one entirely for him to decide.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 70 of 1928-29. (Decided on 21-1-1931).

Townsend, F. C.

BHOLA and another

Applicants.

Versus.

BUDDHAN and others

Other side.

Punjab. Tenancy Act--S.s 80 & 84--Second appeal--suit for regarding occupancy right--dismissal by Assistant Collector and Collector regarding some of the fields--no appeal lies to Commissioner but interference in revision justifiable.

Where a suit for occupancy rights in certain fields is dismissed partly as regards some of the fields, by both the Assistant Collector and the Collector no appeal lies to the Commissioner, but interference with the order of the two lower Courts in revision is quite justifiable in proper cases. 6 L. L. T. 37; 11 C. 6 referred to.

Revision from an order of the Commissioner of Ambala Division.

ORDER.

Mr. Qabul Chand rightly points out that no appeal lay to the Commissioner as regards those fields in which both the Assistant Collector and the Collector held that the tenants could not get occupancy rights, in accordance with the principle laid down by Mr. King, as Financial Commissioner, in the judgment reported *Rai Faiz Muhammad Khan v. Crown* (1) I therefore regard the case as one that has come to my notice under S. 84 of the Tenancy Act.

On the merits I entirely agree with the Commissioner that the tenants, Chamars, are entitled to occupancy rights in all the land. Interference with the orders of the two Lower Courts on revision is in my opinion quite justifiable in this case bearing in mind the principles laid down governing interference in revision by the Privy Council in the case reported *Amir Hasan Khan v. Sheo Bakhsh Singh* (2).

I therefore reject this application of the landlords. No costs considering all the facts of the case. *Application rejected.*

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue

No. 10 of 1928-29. (Decided on 22-1-1931).

Townsend, F. C.

KIRPA RAM, and another

Applicants

Versus.

SHAH MUHAMMAD.

Respondent.

—Punjab Tenancy Act S. 84—Collector's order regarding redemption of mortgage—Financial Commissioner has no power to interfere in revision.

S. 84 of the Tenancy Act under which alone the Financial Commissioner can interfere is not mentioned in S. 3, of Act II of 1913. Hence, the Financial Commissioner has no power to interfere with the Collector's order regarding redemption of a mortgage.

Case forwarded by the Commissioner of the Lahore Division.

(1) 6 L. L. T. 37. (2) 11 Cal. 6 (P. C.)

ORDER.

Mr. C. A. H. Townsend Financial Commissioner.—This and the similar case No. 11, are to my mind entirely decided by the fact that S. 84 of the Tenancy Act, under which alone I could interfere, is not mentioned in S. 3 of Act II of 1913. I have, therefore, no powers whatever to interfere with the Collector's order in either case, no revision to me legally lies. Both applications for revision are rejected.

Applications rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

No. 85 of 1928-29. (Decided on 23-1-1931).

Townsend, F. C.

AHMAD KHAN

Appellant

Versus

~~RAJA KHAN and another~~

Respondents.

—Sufedposh – appointment – candidate, a brother of Zaildar.

Held that the appointment as Sufedposh of the brother of the Zaildar in the same *zail* is generally speaking most undesirable.

Appeal from an order of the Commissioner, Rawalpindi Division.

ORDER.

I have heard Mr. Mahbub Ilahi at length for petitioner. He has not adduced one single reason to lead me to think the Commissioner's order dated July 1, 1929 not perfectly right. I entirely agree with it. I consider that the appointment as Sufedposh of the brother of the Zaildar in the same *Zail* is generally speaking, most undesirable.

As a minor point, I note, that the Commissioner should, before he cancelled his predecessor's order sanctioning petitioner's candidature for the *sufedposhi* have obtained my sanction to such action, under section 15 of the Land Revenue Act. And he should have called upon petitioner to show cause why that order should not be cancelled.

Dismissed. No costs.

Appeal dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER, OF THE
PUNJAB.

Revision Side.

Revenue.

No. 35 of 1927-28. (Decided on 26-1-1931.)

Townsend, F. C.

WALI MOHAMMAD and others

Applicants

Versus

UMAR and others.

Respondent

Punjab Land Revenue Act, S. 118 - Partition proceedings—land partitioned—diminution in area liable to partition by a civil decree—former khasra numbers not identifiable—procedure.

A certain land was partitioned, but by a civil decree the area liable to partition was greatly diminished. Also it was impossible to identify the former *khasra* numbers owing to riots in 1919. Held that in such circumstances, an entirely new partition was desirable.

Case forwarded by the Commissioner of Lahore for revision.

ORDER

It is now possible to arrive at a decision on this long pending partition case, the Privy Council having rejected Wali Mohammad and others (mortgagees) appeal. The judgment of the District Judge of Sheikhupura, dated 26-3-1923, stands and we must give effect to it, in partition, in accordance with the request of Rahmat Ali and Umar, representatives of the original mortgagors. The District Judge held that they—Rahmat and Umar—were entitled to possession, having redeemed their mortgage of 200 *ghomaos* and not of 288 *ghomaos*. As to the balance of 88 *ghomaos* separate civil litigation is in progress. On its conclusion whoever thinks himself entitled to ask for partition of it may do so. But that is quite separate from the present matter.

I heard counsel for the parties recently: Mr. Nanak Chand for applicants, Rahmat and Umar, and Mr. Noad and Mr. Hazara Singh for respondents Wali Mohammad and others. The respondent's counsel raised no objection to the partition of 200 *ghomaos* and its allotment to the appellants. The only question for decision now really is whether the original partition of 288 *ghomaos* will answer the present purpose, in which only 200 *ghomaos* are to be partitioned or whether an entirely new partition is necessary. I have no doubt whatever that an entirely new partition is desirable, in view of the large diminution in area.

Accordingly I reject this application, and set aside all the proceedings that have taken place, so far in this partition, and order that applicants' 200 *ghomaos* be immediately partitioned. The mortgage deed specifies actual *khasra* numbers as mortgaged, and the walls on which they were situated. Unfortunately it is impossible to identify those *khasra* numbers, the relevant revenue records having been destroyed in the riots in Gujranwala in 1919: if it was possible to identify them, these partition proceedings would be of course unnecessary. All that would have been needed was to hand back those *khasra* numbers to the petitioners. But as it is not possible to identify them, these partition proceedings are necessary. So they should be completed as soon as possible, the Revenue Assistant of Sheikhupura should keep them on his own file, so long pending the dispute. He should not send the case to the Tahsil though there is of course no objection to his calling on the Tahsil revenue staff of all grades to give him any assistance in the case that he wishes. He should deal with it on the spot, and, in the partition, allot to

the petitioners lands on the wells mentioned in the mortgage deed, and so far as possible, according to the general description of the mortgaged lands given in that deed. He should deal with the case with the utmost expedition.

No costs.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 85 of 1930-31. (Decided on 4-2-1931).

Calvert, F. C.

CH. MAHLA SINGH and others.

Applicants

Versus

CROWN.

Respondents

Punjab Law Revenue Act. S. 5 (e) — Revenue Officer reviewing his order—omission to give opportunity to person affected to appear—procedure not proper.

Where a Revenue Officer proceeds to review his order, he must give opportunity to the person affected to appear as required under S. 15 (e) of Land Revenue Act. Where he omits to do so., the procedure is not proper.

Revision of an order of the Commissioner of the Multan Division.

ORDER.

The facts of this case are simple. An officer empowered to exercise certain power subject to the control of a senior officer passed an order in a Revenue Officer's case (not a judicial case) to which the senior officer objected. The latter wrote an order in his capacity of controlling officer. There is no appeal for revision against this order. The original officer then proceeded to review his order but omitted to give opportunity to the person affected to appear as required by section 15 (e) of the Land Revenue Act. The Commissioner referred the case back for the proper procedure to be observed. This was quite correct.

It is true that the Commissioner made a slip in writing that the "Settlement Officer cancelled the exchange" whereas he directed that "the exchange must be cancelled." He left it to the junior officer to review his own order. Apart from his slip of the Commissioner, I can find nothing to object to in the procedure. The arguments of the learned counsel for the petitioners would deprive Revenue Officer of any chance of rectifying mistakes.

I reject this application. The Commissioner's order stands directing that notice be issued under section 15 (e) of the Land Revenue Act and that order be passed after hearing parties affected.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

APPELLATE SIDE.

Revenue.

No. 2 of 1930-31. (Decided on 12-2-1931).

Calvert, F. C.

PHALANGAR KHAN

Appellant.

Versus

KHAN

Respondent.

**Lambardar—creation of new post—object of—second Lambardar—
being of same tribe as another lambardar—no disqualification.**

Held, that the chief object of having more than one Lambardar is that in a village where there is only one Lambardar, his death, suspension or absence on leave necessitates the making of special arrangement which would not be required, if there were a second Lambardar who would carry on in his place. Held also, that there is no question of relationship or of being of the same tribe; and to be of the same tribe as another Lambardar is not an absolute disqualification. 1 P.R. (Rev) 1918 followed.

Appeal from the order of the Commissioner of Rawalpindi Division.

ORDER

The chief difficulty in this case is to understand why in the face of the very clear ruling in *Mashir Ali v. Chiragh Khan* (1) the Commissioner set aside the carefully considered decision of the Collector.

The case relates to the succession to the *Lambardari* in a horse-breeding *chak* in the Lower, Jhelum Colony. The previous Lambardar had been dismissed for various defects, including bad horse-breeding. The *chak* is composed of grantees of various clans, and no single tribe or clan has a predominant holding. There is already one *Awan* Lambardar. Attempt had been made to try a *Ghuman*, but the incumbent had been dismissed.

The Collector had before him the reports of his staff *Naib-Tahsildar*, *Tahsildar* and Colony Assistant and in a very carefully considered order has examined the claims of the various claimants.

His decision was in favour of Phalanger Khan, *Awan*, who has an excellent record of horse-breeding.

The Commissioner was apparently inclined to leave Phalanger as Lambardar and allow for the claim of other by creating a third post of Lambardar. After calling for a report from the Collector, he abandoned this idea and setting aside the order of the Collector he appointed Khan as Lambardar. It is difficult to gather from the order on appeal what exactly were the grounds for this decision. Reference is made to para 454 of Volume I of the Colony Manual, but there does not appear to be anything there to support the action.

(1) 1 P.R. 1918 (Rev.)

It is argued that "some other tribe should also be represented" and there is force in this; but it is hardly correct to say that "the object of having a second Lambardar in the *chak* would be entirely frustrated if he also were of the same tribe, and, as in the present case, a first cousin of first Lambardar." The chief object of having more than one Lambardar is stated in the paragraph of the Colony Manual quoted as "in a village where there is only one Lambardar, his death, suspension or absence on leave necessitates the making of special arrangements which would not be required if there were a second Lambardar who could carry on in his place." There is no question of relationship or of the same tribe.

The strongest argument in favour of Phalangar Khan is *Mashir Ali v. Chiragh Khan* (1). Counsel for the respondent was careful to ignore this in his reply. The learned Commissioner did not mention his well-known judgement in his order and so it is not known for what reasons he decided not to follow it.

I can find in the order of the learned Commissioner no sufficient grounds for departing from this decision. To be of the same tribe of another Lambardar is not any absolute disqualification; and to have acquired relationship by marriage is hardly relevant.

On the merits of the candidates, there is no question as to the superior claims of Phalangar Khan.

Following *Mashir Ali v. Chiragh Khan* (1) I hold that in view of the obvious care exercised by learned Collector and of the detailed examination of claims made by him, his decision ought to be allowed to stand.

I, therefore, accept this appeal and setting aside the order of the learned Commissioner, I restore that of the Collector. Respondents to pay costs of appellant. Counsel's fee thirty two rupees.

The revision application of Feroz Ahmad is rejected for reasons sufficiently detailed above.

Appeal accepted.

IN THE COURT OF FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side,

Revenue.

No. 107 of 1929-30. (Decided on 4-9-1931.)

Dobson, F. C.

MOHNA

Applicant.

Versus

FIRM PARAS RAM BANU MAL

Otherside.

Punjab Tenancy Act, S. 84—attachment and sale of a house of an agriculturist—claim for exemption—mere [clerical error—no ground for appeal—serious miscarriage of justice justifying revision.

Where an appeal is accepted on the basis of a mere clerical error, leaving the party without any redress from attachment and sale of his house from which he claims exemption as an agriculturist, it is serious miscarriage of justice justifying revision.

Revision against the order of Commissioner, Ambala Division.

ORDER.

Parties present and counsel for respondent heard. With due deference to the learned Commissioner, I think he has given his support to a very trivial argument. The decree-holder in this case is undoubtedly Paras Ram, but his son and agent is Banu Mal. Banu Mal has been acting for his father throughout, and in appeal before the Collector the names evidently got mixed up, with the result that the respondent was described as Banu Mal son of Paras Ram instead of Paras Ram through his *Mukhtar* Banu Mal. This was a clerical error and hardly a sufficient reason for accepting the appeal and cancelling the Collector's order. I note also that the learned Commissioner, having elevated this mole-hill into a mountain, proceeded to ignore the remaining grounds of appeal altogether. The effect has been to leave the applicant without any redress against the attachment and sale of his house from which he claims as an agriculturist to be exempt. This is a serious matter for the applicant, so I must treat the learned Commissioner's order as a miscarriage of justice. The applicant is entitled to the enquiry ordered by the Collector on the 1st June 1929. In accepting this application for revision I accordingly direct that the said order of the Collector will stand and have effect.

Order announced.

Revision accepted

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Appellate Side.

Revenue.

No. 1 of 1930-31. (Decided on 12-2-1931).

Calvert, F. C.

KANYA SINGH

Appellant.

Versus

RAM CHANDAR

Respondent.

—Lambardar—appointment of—consideration in—Collector's choice.

When appointing Lambardars, the first consideration should be to secure a man who will perform the duties. The duties must be the first consideration; the representation of different classes of land-holder is secondary and indeed is subsidiary to the former inasmuch as representation is chiefly important as enabling the official to perform his duties with satisfaction to all concerned. In colony tracts, the prime consideration should be the appointment of a man who will perform the duties well and only for the very strongest reasons should any one be appointed who has not the slightest intention of residing in the Chak or performing the duties. I P.R. 1918 (Rev.) referred to.

Appeal from the order of the Commissioner of Multan Division.

ORDER

This case relates to a Colony Lambardari, which fell vacant owing to the exchange from the chak of the original holders of the post. The Collector after considering reports from the Tahsildar and E.A. C. appointed Ghanaya Singh, a Jat Sikh and a Saini. The case of the latter is not in question.

The learned Commissioner was of opinion that one post should go to Hindus and after reference to the Collector appointed Ram Chand.

In the grounds of appeal to the Commissioner, it is important to note that nowhere is it alleged that the Collector failed to "exercise his discretion in a reasonable manner, neither ignoring any portion of those matters which he ought to consider, nor perversely running counter to the general sense of the rule." No legal flaw is urged and there is no allegation that any rule has been broken. The grounds in short hardly deserved consideration. It is not claimed that any of the four points listed in Land Revenue Rule 15 favour Ram Chand. The sole reason for his appointment by the learned Commissioner would appear to be that Hindu representation was considered necessary. There is already a Hindu Lambardar, and the reasons why he is regarded as unsuitable are not explained; there is some rather vague surmise but no definite point.

Ram Chand is a young man who has taken up Government service and so will in all probability remain an absentee for many years to come.

Now when appointing Lambardars, the first consideration is to secure a man who will perform the duties. In order to enable him the better to perform such duties it is desirable that he should be representative of some large class of land-holders; but as the Lambardar is an important village official, it is of prime importance that he should be able to perform the duties of the office. In many cases especially where hereditary claims are not paramount, there is an element of reward for past services, but even here the basic idea is that one who has rendered good services in the past may be accepted to render good service in the future.

An absentee cannot perform the duties of a Lambardar, and in case where the hereditary principle does not apply, great caution should be exercised in appointing one who has no intention whatsoever of performing the duties for which he is appointed.

The duties must be the first consideration; the representation of different classes of landholders is secondary and indeed is subsidiary to the former, inasmuch as representation is chiefly important as enabling the official to perform his duties with satisfaction to all concerned. In colony tracts the prime consideration should be the appointment of a man who will perform the duties well, and only for the very strongest reasons should any one be appointed who has not the slightest intention of residing in the chak or performing the duties.

The appointment of Ram Chand would leave the Jats unrepresented; a Saini is not likely to be accepted by Jats as representing them. The Collector's attitude on this point of a Jat Lambardar seems to be justified.

In view of *Mashi Ali v. Chiragh Khan* (1) and of the above considerations, I accept this appeal, set aside the order of the learned Commissioner, and restore that of the Collector. Respondent to pay costs. Counsel's fee thirty-two rupees.

The decision of the learned Commissioner was clearly written in ignorance of the circumstances under which Ram Chand obtained this grant or of those which have led to the retirement from service of the father who was proposed as *sarbarah*. It would be difficult to find a more unsuitable appointment. *Appeal accepted.*

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 45 of 1928-29. (Decided on 3-4-1931.)

Townseud, F. C.

KALE KHAN

Applicants.

Versus.

KHAIR DIN

Other side.

Punjab Tenancy Act, S. 84—Revision—Powers of Financial Commissioner—less in cases under Tenancy Act.

Though the powers of interference on revision of the Financial Commissioner are less in cases under Tenancy Act than under the Land Revenue Act, still, where revision in a case under Tenancy Act is otherwise justifiable, it is not illegal.

Case forwarded by the Commissioner of Lahore Division.

ORDER OF REFERENCE.

In this case the landlords applied for ejectment of their tenants and the latter, sub-tenant under section 43 of the Punjab Tenancy Act, and the tenants (along with those holding under them) brought a suit to contest their liability to be ejected. The rent payable by the tenants was Rs. 25 P. A. while the annual rent payable by the sub-tenants was Rs. 525 with some fruit: Rs. 14. The plaint was originally stamped with a court-fee stamp of Rs. 1-14-0 fixed with reference to the one year's rent payable by the tenants. The Court asked the plaintiffs to furnish additional court-fees as the rent payable by the sub-tenants was also to be taken into account in fixing the court-fee to be paid. This was accordingly done.

In appeal as the tenants alone were the appellants they valued their suit at Rs. 25 and Collector dismissed the appeal on the ground that the value of a case must be the same in both the original and appellate Courts. He quoted 15 All 912 and 13 L. C. 379, in support of the view he took. In the first place these rulings cannot be traced, and it appears that some mistake has been made in quoting the authorities on the subject. In the second place it is not correct to say that "the

(1) 1 P. R. 1918 (Rev.)

appellant could have valued the suit at Rs. 25 and that for their own end they valued it at Rs. 525 " since they had originally valued the suit at Rs. 25. Moreover the case quoted in *Duni Chand and others v. Azim Khan and others* (1), is an authority for the view that "it is open to the appellant to reduce the claim in appeal when he is unable to pay the court-fee demanded by the appellate Court as payable thereon". Similarly as held in *Syed Ibrahim Sahib v. Arumugathayee and another* (2), there is nothing to prevent an appellant from attacking only a portion of a decree against him by paying court-fee only thereon although the reason for the attack might cover the whole decree.

The appellants in this case could leave out their sub-tenants and attack the decree only so far as it affected their own right to hold the land.

The case is accordingly submitted to the Financial Commissioner with the request that the order passed by the Collector may be set aside under section 84 of the Punjab Tenancy Act.

ORDER.

The facts are given in the Commissioner's reference to me dated 29th May 1929, in which he asked me to revise the Collector's order dated 22nd June 1928, dismissing the appeal on the ground that it was insufficiently stamped.

The case is under the Tenancy Act under which my powers of interference on revision are less than under the Land Revenue Act. But following the Financial Commissioner's ruling in *Mangat Rai v. Nand Kishore and another* (3) I hold that revision in this case is if otherwise justifiable, not illegal.

Another preliminary point may be disposed of. The Commissioner says in his note of reference that he could not find two judgments referred to by the Collector: 15 All. 912 and 13 I. C. 379. The right references are 15 All. 112 and 30 I. C. 379.

I have heard arguments in detail for each party. The Collector was, in the Commissioner's opinion, wrong. In that view I agree. The sub-tenants who were parties to the case in the trial Court did not join in the appeal, which was only filed by the real tenants. So far as they were concerned the appeal was properly stamped. And there is abundant authority for holding that an appeal filed by only some of the parties to an original suit need only be stamped to the extent required by the interests of those parties. There was, as a matter of fact, no reason at all for the sub-tenants to have joined in the original suit, it is at least probable that they have now no interest at all in the land involved.

Accordingly I, agreeing with the Commissioner, accept the revision. I hold that appeal in the Collector's Court was properly stamped, and cancelling his order dated the 22nd June 1928 by which he rejected the appeal—remand the appeal to him for re-trial on the merits. No order as to costs in my Court. Stamp on the revision application to be refunded to the applicants.

Revision accepted.

(1) 11 P. R. 1912.

(2) 38 Mad. 18.

(3) 7 Lr. L. T. 19.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 4 of 1931-32. (Decided on 4-11-1931).

Miles Irving, F. C.

HARDIAL SINGH

*Appellant.**Versus.*

JHANDA SINGH

Respondent.

—Lambardar—appointment—Collector's choice—person not within the degree prescribed in Land Revenue Rule 17 (ii) (a)—order is obviously ill-judged.

Where a Collector appoints a man on hereditary grounds only, although he is not within the degree prescribed in Land Revenue Rule 17 (ii) (a), the order is obviously ill-judged.

Appeal from the order of the Commissioner of Jullundur Division.

ORDER.

In this case the Commissioner has reversed the order of the Collector appointing a Lambardar.

The Collector's order is obviously ill-judged. He has not troubled to acquaint himself with the rule, but has appointed a man on hereditary grounds only although he is not within the degree prescribed in Land Revenue Rule 17 (ii) (a). On the merits he has appointed the infant son of a man who was dismissed for helping bad characters without regard to Land Revenue Rule 17 (ii) (a).

I have no hesitation in rejecting the appeal without calling on appellant.

*Appeal rejected.*IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 102 of 1929-30. (Decided on 15-5-1931).

Townsend, F. C.

HASHMI

*Applicant.**Versus*

PIR SANT DASS

Other side.

Punjab Tenancy Act, S. 88—Civil P. C. (V of 1908), O. 41, r. 1—disposal of preliminary issue—appeal—copy of order not necessary to file with memorandum.

It is not necessary under O. 41, r. 1, C. P. C. for an appellant to file with the memorandum of appeal, a copy of the order disposing of a preliminary issue in a case.

Case forwarded by the Commissioner of Multan Division.

ORDER OF COMMISSIONER.

This is an application for revision of an order by the Collector of Jhang, dated the 12th June 1929, and I have heard counsels on both sides. The Collector, as stated in his order, relied upon a number of rulings by the Lahore High Court to the effect that the decision of preliminary issues is a judgment, and a copy of such judgment should be filed with the memorandum of appeal. In the absence of this copy in the present case it was accordingly held by the Collector that there was no proper presentation of a certain appeal before him which was accordingly dismissed.

Counsel for the applicant has referred me to Full Bench ruling *Mussammatt Saban v. Shahbal and others* (1) in which it is held that it is not necessary under Order 41, rule 1, C. P. C., for an appellant to file with the memorandum of appeal a copy of the order disposing of a preliminary issue in a case. This Full Bench ruling was given subsequently to the Collector's order under revision, but must be regarded as having retrospective effect for the purposes of the present revision. In the light of it the Collector's order was clearly wrong.

I accordingly refer this case to the Financial Commissioner with the recommendation that the Collector's order be set aside and that he be directed to decide the appeal according to law.

The parties wish to appear before the Financial Commissioner.

ORDER.

Both gentlemen agree that for the reasons given by the Commissioner, the Collector's order dated 12th June 1929 was wrong. I, therefore, cancel it, and return the records to the Collector through the Commissioner, with instructions to the former to re-try the appeal on its merits. Application accepted.

No order as to costs.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

No. 42 of 1930-31. (Decided on 26-5-1931).

Revenue.

Townsend, F. C.

Applicant

BAHAL SINGH

Versus

Otherside.

JAGAT SINGH

Punjab Tenancy Act, S. 4 (7) and S. 77 (3)—no relationship of landlord and tenant—surety for payment of rent—suit against surety for recovery—jurisdiction.
(2) 10 Lah. 587 (F. B.)

Held that a revenue Court cannot take cognizance of a case in which a man is sued on account of rent for land for which he is alleged to have given security not withstanding the alteration made in the Tenancy Act by Act III of 1912, 81 P. R. 1904 followed.

Case forwarded by the Commissioner, Lahore Division, for a ruling.

ORDER.

The facts are given in the Commissioner's order referring the case to me. The only point for decision is whether a Revenue Court can take cognizance of a case in which a man is sued on account of rent of land for which he is alleged to have given security. I have heard counsel at length for both parties. The case is to me quite clear: *Hafiz Muhammad v. Ghulam Jilani* (1) governs it. There was no relation of landlord and tenant between the landlord and the alleged surety. Nor can I find that the alteration made in the Tenancy Act by Act III of 1912 affects the case in any way; there is nothing whatever in Section 77 (3) of the former Act to bring the suit within the jurisdiction of a Revenue Court.

I, therefore, accept the application for revision and cancel the decree given by the Assistant Collector, Kasur, dated June 26th, 1930, so far as Bahal Singh, the surety defendant, is concerned. The plaintiff can seek his remedy against him, should he wish to do so, in a civil Court.

Parties may pay their own costs in my Court.

Revision accepted.

Order of Commissioner referred to above is as follows:—

This was a suit for a recovery of rent against the tenant as well as against the surety. The trial Court gave decree in favour of the plaintiff and the defendant's appeal was rejected by the Collector. Now an application has been made to me that the case should be taken on the revision side. The main point which has been urged before me is that the suit against the surety was triable by a Civil Court and not by a Revenue Court. The counsel for the appellant quoted *Hafiz Muhammad v. Ghulam Jilani* (1). If that judgment holds good to this day, no doubt, the case against the surety could not be heard in a Revenue Court. However, the counsel for the other party has argued before me that, since the judgment of 1904, the Tenancy Act was revised in 1912 by Act III of 1912 and proviso added to Section 77, and also quoted ruling 9 Lahore, page 38 of 1928, but I find that in this ruling no reference has been made to *Hafiz Muhammad v. Ghulam Jilani* (1) and the facts in issue are not similar to those given in the ruling. On one hand, no doubt, it is desirable that the case against the tenant and the surety should be decided by the same Court, because, if there is a separate case in a Civil Court against the surety, that Court shall have to ascertain the amount of rent due from the tenant before it can give a decree a favour of the plaintiff. An ascertaining of the exact amount

(1) 81 P. R. 1904.

of rent in arrears could only be done by a Revenue Court. And, on the other hand, there is ruling, *Hafiz Muhammad v. Ghulam Jilani* (1), which has distinctly laid down that in such cases the case against the surety should be lodged in a Civil Court. I refer this case to the Honourable Financial Commissioners for a ruling for the future guidance of the Revenue Courts of the Province. The parties wish to be heard before the Financial Commissioners.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side.

Revenue.

No. 5 of 1930-1931. (Decided on 16-5-31).

Townsend, F. C.

BAJ SINGH

Appellant

Versus

CH. MUSHTAQ AHMAD

Respondent.

Zalidar—choice by Collector or Commissioner—very strong reasons necessary for Financial Commissioner to set aside the appointment.

It would need very strong reasons for the Financial Commissioner to set aside the appointment of a *Zalidar* made by the Collector or the Commissioner.

Appeal from the order of the Commissioner of Lahore Division.

ORDER.

For the reasons given by the Collector and the Commissioner there is no reason to consider Jan Mohammad's claim seriously, and I dismiss his application.

Nor need the claims of Amar Singh detain us. Neither the Collector nor the Commissioner have thought him the most suitable man for this *zaildari*. It would need very strong reasons for me to set aside their opinion, stronger reasons than exist. He is a retired Extra Assistant Commissioner who cannot have much influence in the *ilaga*. He is an excellent man, an old friend of mine, for whom I have great regard: but I fear these considerations cannot help him in this connection. I dismiss his application.

The contest really lies between Baj Singh and Mushtaq Ahmad. The Collector's and the Commissioner's orders give the facts of the case fully and they need not be recapitulated. The case is not free from doubt. Muhammadans are, it is true, in a majority in the *zail*, but Hindus are a very important minority. If the Commissioner's choice of Mushtaq Ahmad stands, both *zaildar* and *sufedposh* in the *zail* will be Muhammadans. Further Mushtaq Ahmad is a comparatively young man, in Government service, so for years his work as *zaildar*, if I agree with the Commissioner, will have to be carried on by a *sarbarah*. Still if one *sarbarah* is in the Collector's opinion unsatisfactory, he can always call on Mushtaq Ahmad to produce another.

On the other hand Mushtaq Ahmad strikes me as a man of distinctly more character and personality than Baj Singh a retired *Daffadar*, and a worthy man according to his lights, but nevertheless ordinary, neither he nor his counsel could in any way explain before me a statement he made, when applying for a military scholarship for his son, which showed that he had very much less property than that is put forward in his claim for *zaildari*.

Having given the matter due thought I can see no reason to disagree with the Commissioner, and dismiss Baj Singh's appeal. Parties may pay their own costs.

Appeal dismissed.

IN THE COURT OF FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 166 of 1930-31. (Decided on 10-7-31.)

Miles Irving, F. C.

NUR BAKHSH

Applicants

Versus

CROWN

Respondent

Crown lands—disposal of—unrestricted powers of Government—no locus of third party to appeal or to apply for revision against an order on such appeal—right to petition to Government or Government officer to exercise discretion in other than judicial capacity recognized.

Held, that Government is not bound by any restrictions in the disposal of unallotted crown waste lands. Any instructions, it may lay down for the disposal of such wastes are purely administrative instructions for the guidance of its subordinate officers. No third party has any *locus standi* whereby to appeal against an order or to apply for revision against an order arising out of the said appeal. There is no objection, however, to the residents of the village requesting the Government or any of its officer to exercise his discretion in a particular way acting in a capacity other than judicial.

Revision against the order of Commissioner, Lahore Division.

ORDER.

In this case one Nur Mohammad, held as a Crown tenant certain Government lands. As they were damaged by *kallar*, he was in June 1928 given certain land in exchange at other Government waste, classed as *charagah*. An objection was lodged by certain tenants of the village. The successor of the Deputy Commissioner, who ordered exchange, cancelled it. An appeal was lodged against that order, and the Commissioner accepted it and restored the first order on the ground that the Deputy Commissioner could not review his predecessor's order without sanction. The present Collector decided not to apply for sanction for review, and an appeal has been presented in the Court of the Commissioner and rejected. Certain

residents of the village now apply to me for revision. I am of opinion that Government is not bound by any restrictions in the disposal of unallotted Crown waste. Any instructions, it may lay down for the disposal of such waste, are purely administrative instructions for the guidance of its subordinate officers. It follows that no third party has any *locus standi* whereby to appeal against an order allowing Crown waste; and to admit such an appeal or a revision arising out of such an appeal, in which the Crown is impleaded as respondent, would be to admit the claims of a third party as of right to control Government in the allotment of unallotted Crown land. I, therefore, as chief revenue Court and acting in my judicial capacity decline to accept the revision.

I observe that there would be no objection to the residents of the village petitioning Government or any officer of Government with the request that they should exercise the discretion of Government in a particular way. But such a petition would be entirely distinct from an appeal or application for revision made in the Courts of Commissioner or the Financial Commissioner acting in their judicial capacity.

Revision dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue.

No. 40 of 1930-31. (Decided on 13-7-1931).

Miles, Irving, F. C.

NURA and others

Applicants

Versus

CROWN

Respondent.

—Canal and Drainage Act (8 of 1873), Rule 32—Irrigation by zamindars by wrong water course—penalty can be legally levied.

Penalty can be legally levied under rule 32 for irrigation by zamindars by a water course other than the one prescribed by the local officers of the Irrigation Department.

Revision from the order of the Commissioner of Multan Division.

ORDER.

In all these cases penalty has been levied for irrigation by one water course when another had been prescribed by the local officers of the Irrigation Department. I have consulted my colleague and we are both of opinion that in such a case a penalty can legally be levied under rule 32. At the same time I am of opinion, after taking the advice of the Chief Engineer that the order of the local officer of the Irrigation Department was of doubtful necessity. The original water course ran diagonally through two squares and a when they were allotted, was by order diverted so as to run round them—an order which was not obeyed.

I do not feel competent to express an opinion on the advisability of this diversion; and whether it was advisable or not, it was the duty of the irrigators to obey the order. Nevertheless, in view of the doubtfulness of the necessity of the diversion, I reduce the penalty to a nominal one. At present in the four cases before me and in one other which has not come up, the actual penalties are at quarter rate.

Rs.	A.	P.
198	5	0
392	5	0
189	12	0
199	5	0
165	12	6
1,145	8	6

I reduce these all to a nominal fine of $1/32$ i.e. the above are divided by 8.

Fines reduced.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 175 of 1930-31. (Decided on 4-8-31).

Asghar Ali, F. C.

TAJ-UD-DIN

Applicant

Versus

CROWN

Other side.

**Colonization of Government Lands (Punjab) Act 1912,
S. 24—new colony in existence for 12 or 15 years—liability of
grantee to fulfil conditions of personal residence—resumption of
land under—notice contemplated under section.**

After a new colony has been in existence for 12 years or 15 years and has become firmly established, a grantee, who has not acquired the proprietary rights, retains his technical liability to fulfil the conditions of personal residence, but the existence of a habitual house should be accepted as sufficient evidence of residence and further inquiries into the habits of the grantee should be avoided. P. R. 1914 (Rev.) followed.

Held also, that S. 24 of the Punjab Colonization of Government Lands contemplates the issue of a written notice requiring the tenant to rectify the breach of condition within a reasonable time, not being less than one month to be stated in the notice.

Revision from the order of the Commissioner of Multan Division.

ORDER.

The petitioner Taj-ud-Din, was granted a rectangle on peasant conditions in 1916 in Chak. No. 24/11-L., Montgomery tahsil. Occupancy rights were granted to him in 1921. This grant was confiscated by the Settlement Officer's order, dated the 24th October, 1930, on account

of the grantee's absence from the Chak. The Commissioner rejected his appeal on the 14th of January 1931. He comes to this Court on the revision side.

This resumption has been ordered under S. 24 of the Colonization of Government Lands (Punjab) Act, 1912. That section contemplates the issue of a written notice requiring the tenant to rectify the breach of condition within a reasonable time, not being less than one month, to be stated in the notice. Such a notice was issued on the 2nd of June 1930, whereby the petitioner was given three months' time to rectify the breach. This notice was not personally served on him, as he was absent from the Chak. The second notice dated the 3rd of October, 1930, was received by him at his home address in the Sialkot District on the 14th of October 1930. This notice, however, only required the petitioner's presence on the 24th of October 1930, at Montgomery, but he did not attend before the Settlement Officer on that date, and the resumption was ordered. Technically this notice could not be considered as one contemplated by S. 24 of the Act.

In *Bahadri and another v. Emperor* (1), it was held "that after a new Colony has been in existence for twelve or fifteen years and has become firmly established, a grantee, who has not acquired proprietary rights, retains his technical liability to fulfil the condition of personal residence, but the existence of a habitable house should be accepted as sufficient evidence of residence and further inquisition into the habits of the grantee should be avoided." In the present case the tenant has a residential house and cattleshed in an *ahata*. The Lower Bari Doab Canal Colony may be considered as having been firmly established. The ruling, therefore, is on all fours with the present case.

I accept the revision application and restore the rectangle to the petitioner.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 220 of 1930-31. (Decided on 20-8-31.)

B. H. Dobson, F. C.

ZAIDA AND OTHERS

Applicants

Versus

CROWN

Other side.

Northern India Canal and Drainage Act - Canal Rule 100 -
benefit of doubt.

Damage was done to an outlet at Lalian distributory and it was certain that the damage done was deliberate and was done by some unknown person of a certain village, but there was some doubt as to date on which the damage was

(1) 3 P. R. 1914 (Rev.)

inflicted. The quantity of water taken without authority was far less than they were entitled to. Held that as in such circumstances there was doubt whether so much allowance was legally due, the *tawan* imposed on the village be reduced to one half.

Revision against the order of Commissioner, Multan Division.

ORDER.

This case has been referred to me by the Chief Engineers for action, if necessary, under Canal Rule 100 applicable to the Lower Jhelum Canal. It seems that damage was done to an outlet at Latian distributary, which irrigates chak 32. S. B. and village Pakka. By a coincidence, each belongs to a different district and a different revenue division. The Divisional Canal Officer imposed a fine of Rs. 1,034-2 on chak No 32. S. B., and of Rs. 289-14-0 on village Pakka. An appeal from Chak No. 32. S. B. was accepted *in toto* by the Commissioner of Rawalpindi. On the other hand, an appeal from village pakka was rejected by the Commissioner of Multan. I have to consider whether there was good cause for this differential treatment, neither village having applied for revision in this Court.

There is no doubt that the outlet was deliberately damaged, and that the blame rests upon persons unknown of village Pakka. The order passed by the Commissioner Rawalpindi remitting the penalty of Chack No. 32. S. B., is, therefore, free from objection, and the order passed by the Commissioner of Multan on village Pakka is *prima facie* reasonable. I find, however, that there was some doubt as to the date on which this damage was inflicted. It might have been as late as the 23rd of March or as early as the 26th of February, since on the 25th February the outlet was found to be intact. The persons penalized did not receive the benefit of the doubt. Again, they were entitled to 133 cusecs for irrigation, and the quantity of water taken without authority was 18 cusecs. They did not receive the benefit of 133 cusecs to which they were entitled; there is however some doubt whether this allowance is legally due in the circumstances. Lately, apart from the law of the matter, the Chief Engineer is inclined to lenient treatment on economic grounds, I think, the case will be sufficiently met, if the *tawan* imposed on village Pakka is reduced to one-half, and order accordingly.

Order accordingly.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 141 of 1929-30. (Decided on 27-8-31.)

Dobson, F. C.

SAJJAD HUSSAIN KHAN

Applicant

Versus

ZARGHAM HUSSAIN and another

Otherside.

Punjab Land Revenue Act—S.16—revision—limitation.

Held that a revision filed after more than 90 days ought to be dismissed in limini.

—S. 118—mode of partition.

Held, that there is no sense in microscopic partition of each *khewat*, but that where there are three classes of land, *chahi*, *nahri* and *barani*, each class should be partitioned separately and the parties should be allotted their proper share in each class, consideration being taken of value and rent in the process of such allotment.

Revision from the order of the Commissioner of Ambala Division.

ORDER.

Parties present with counsel whom I have heard.

This case comes before me on revision. Having been filed more than 90 days after the Commissioner's order, it might have been dismissed in *limine*. My predecessor decided however to admit it to argument, and called for a good deal of supplementary information which has served to elucidate the position.

The result goes to show that there was certainly material for discussion, and in this connection I must remark on the very casual manner in which the Commissioner disposed of the case presented before him. There was a detailed statement of objections under 7 heads, which he dismissed in less than as many lines. In consequence I have had to deal with each of these seven heads myself. The Collector's order was scarcely less satisfying, although a little longer; it does not deal at all lucidly with the points in issue, and should have been much more explicit.

Coming now to the substance of the case, the position briefly is that respondent Zargham Hussain desires partition of his share in these holdings, which amounts to one-third. The petitioner represents a half, and the other respondent, Waqad Hussain, owns 1/6th. All three parties profess a desire for partition, but, in reality, the petitioner wishes to prevent Zargham Hussain, who has no son, from isolating his share of the land. This seems to be the position of Waqad Hussain also. However, their objections have taken other forms. They prefer, for instance, that each of the 17 *khewats* should be partitioned separately into the component shares. They also dispute the number of *khewats*. The latter is, however, correctly given as 17, comprising 19 wells.

As regards the partition of each *khewat* separately, the mode of partition proposed by the Revenue Assistant states the arguments clearly enough. There is, to begin with, no sense in microscopic partition of each *khewat*. Standing order, No. 27, paragraph 9, gives the reason why. In this case, moreover, one of the objects of the partition is to avert family quarrels, which will merely be accentuated, if partition is approved *khewatwar*.

It is objected next that, if Zargham Hussain receives all his land at one well or at one place, injustice will be done to the other share-holders.

This is not the intention. There are three classes of land, *chahi*, *nahri* and *barani* (including *banjar*). Each class will be partitioned separately, and the parties will be allotted their proper share in each. But, of course, in the process of such allotment, value and rent must be taken into consideration, so that mere arithmetical distribution of land in each class will obviously not meet the case. The Collector has not assisted by a very vague description of what was apparently obviously his intention. The remaining points in the grounds of revision put before the Commissioner may be briefly dismissed. The fact that certain other partitions in this neighbourhood have been made *khewatwar* is no argument for a similar proceeding here, if it is contrary to common sense and the necessity of case. The holdings would be too small, whatever Sajjad Hussain may say on the subject. The plea that Zargham Hussain has improper means of influencing the authorities may be disregarded. The Revenue Officer must discharge his duty without fear or favour. Lastly, Zargham Hussain is said to have mortgaged land to Sajjad Hussain. This point has been the subject of enquiry since the case first came before my predecessor. The record shows that none of this land is under mortgage. Moreover, Sajjad Hussain was given time to prove the point and has not done so.

In the circumstances this application is rejected, but the directions herein contained should be carefully observed in the subsequent proceedings. Parties to bear their own costs.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No 24 of 1930-31. (Decided on 22-8-31.)

Dobson, F. C.

BISHAN SARUP and others

Applicants

Versus

MULTAN SINGH and others

Other Side.

Punjab Tenancy Act, S. 84—Revision—Collector's order refusing relief against forfeiture—open to revision.

A Collector's order refusing relief against forfeiture was open to revision inasmuch as he had failed to exercise jurisdiction vested by law and ought to be revised on the merits of the case. 6 P. R. 1912. (Rev.)

—S. 4—Landlord and tenants—suit for ejectment—landlord receiving rent pending ejectment proceedings—effect of.

Where landlord receives rent, when the ejectment proceedings are pending, the case for ejectment is certainly weakened and relief against forfeiture may be granted.

Revision from the order of the Commissioner of Ambala Division.

ORDER.

Parties present with counsel. I have only found it necessary to hear counsel for the respondents.

The facts are stated in the order by the Collector, dated the 30th March, 1930. It was a suit for recovery of rent and ejectment. The Collector, accepting the appeal, confirmed the decree for rent and order of ejectment passed by the lower Court, with a proviso that compensation should be assessed under section 70 of Punjab Tenancy Act, before ejectment took effect. The appeal to the Commissioner was from the judgment-debtors against the order of ejectment, and it was rejected by the learned Commissioner on the 5th November 1930; against this order the tenants applied for revision to my Court.

The grounds stated in the application give the points in issue succinctly. The applicants are perpetual lessees of land in the Balabgarh tehsil, District Gurgaon, which they devote to the cultivation of *Mehndi*. The trees take time to mature, and are remunerative thereafter for many years. Compensation in cash, unless it is very liberal, would hardly atone for loss of livelihood involved in ejectment. It is true that the applicants have made themselves extremely troublesome by defaulting in their rentals. Apparently two suits were necessary, though in the present case I am only concerned with the four harvests ending *Kharif* 1927. On the other hand, the landlords have got the subsequent rents, and, what is more, it seems that the amount decreed was somewhat in excess of the amount due.

Now the question before me is whether, in the circumstances, the applicants should be given the benefit of section 114 of the Transfer of Property Act, read with section 48 of the Tenancy Act, and be relieved from ejectment, in view of the fact that arrears of rent have been made good? It is also a question whether the landlords have waived their rights to eject by acceptance of the said rent. The learned Commissioner decided both points against the applicants. I think, he was wrong. The respondents should not have continued to receive their rents when ejectment proceedings were pending, and could have avoided doing so. They have certainly weakened the case for ejectment in consequence. On the question of relief under the Transfer of Property Act, I am referred to the standard judgment of Sir M. W. Fenton, Financial Commissioner, *Aziz-ud-Din v. Guru Bhagwan Das* (1). In circumstances closely analogous to those of the present case, the Financial Commissioner decided that the Collector's order refusing relief against forfeiture was open to revision inasmuch as he had failed to exercise a jurisdiction vested in him by law, and ought to be revised on the merits of the case. I can see no good reason why this ruling should not be followed. The tenancies now in question are of a very special character. The learned Commissioner considered that these special circumstances gave the respondents a strong right to enforce their claim. My own conclusion is that they give the

applicants a stronger right to resist the claim. They are perpetual tenants virtually privileged never to be ejected, and ejection, as in the case of *Aziz-ud-Din v. Guru Bhagwan Das* (1) which was that of a garden planted with fruit trees, would have been a very harsh proceeding. I accordingly accept this application for revision, and order the ejection proceedings to be quashed. The assessment of compensation ordered by the Collector will therefore not arise.

Order announced. The parties will bear their own costs.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 133 of 1930-31. (Decided on 21-8-31.)

Dobson, F. C.

TUHI RAM

Applicant

Versus

BHOLA and others

Respondents.

Punjab Tenancy Act, Ss. 111, 112 - Scope of - partition proceedings under - parties admittedly landlord and tenant - procedure under Act not applicable - S. 77(3)(i), Punjab Tenancy Act applicable.

S. 111 (1) of the Land Revenue Act requires that the parties to a partition must bear the same status, that is to say, they may be either owners or occupancy tenants but not both. If they be occupancy tenants, consent of landlord is necessary under S. 112 of the Act. But the summary procedure contemplated by the Act is not applicable to proceedings in which the parties are admittedly landlord and tenant respectively. The case falls within the purview of S. 77 (3) (i) of the Punjab Tenancy Act.

Case forwarded by the Commissioner of Ambala Division.

ORDER.

Parties present with counsel for the applicant, whom I have heard.

This case is referred by the Commissioner of Ambala in an order dated 13th March 1913. Certain occupancy tenants applied for partition of holdings jointly held by themselves and the owners. Their grounds for so doing appear to be that the owners had appropriated more than their proper share. The latter raised an objection to partition on the ground that the occupancy rights had been extinguished and there was a question of title. The learned Commissioner has referred the case with the recommendation that partition should be stayed until the question of title is settled.

I find that there is actually no question of title involved. According to the revenue papers, the occupancy tenants are recorded as such in regard to their respective shares. The partition proceedings should

(1) 6 P. B. 1912 (Rev.)

nevertheless be voided on other grounds. Section 111 of the Land Revenue Act requires that the parties to a partition must bear the same status, that is to say, they may be either owners or occupancy tenants, but not both. If they be occupancy tenants, the consent of the landlord is necessary under S. 112 of the same Act. But the summary procedure contemplated by this Act is not applicable to proceedings in which the parties are admittedly landlord and tenant respectively.

The case falls within the purview of S. 77, sub-section (3) (i) of the Punjab Tenancy Act. This section provides for suits between landlord and tenant arising out of the lease or conditions on which a tenancy is held. S. 158 of the Land Revenue Act bars the Jurisdiction of a Civil Court in cases upon which a revenue officer has power to adjudicate, and in *Mst. Aso v. Jagdip Singh and another* (1) it has been held that there is nothing to prevent a suit for partition in cases not covered by S. 111 of the Land Revenue Act. The proper course for the aggrieved occupancy tenants in this case, is to bring a suit against the owners for possession by partition of the land which they claim, or for a share of profits. I accordingly accept the application of the owners in this case, though not for the reasons put forward, and quash the partition proceedings altogether. Respondents have a clear remedy by a suit under S. 77 (3) (i) of the Tenancy Act, which they should now pursue. S. 117 of the Land Revenue Act is not applicable at all as there was never any good ground for staying the proceedings until the question of title should be settled. Order announced.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 26 of the 1929-30 (Decided on 26-8-31).

Dobson, F. C.

MIRAN SHAH and others

Applicants

Versus

KALYA and others

Otherside.

Punjab Tenancy Act, S. 88—C. P. C., S. 11—Res judicata—wrong decision by Naib Tahsildar—not set aside in appeal or revision—suit to declare decree null and void—declaration not to be allowed.

Where the decision of a Naib Tahsildar, even though wrong has not been set aside in appeal or revision, a suit for declaration that the decree by the Naib Tahsildar is null and void should not be decreed.

Revision from the order of the Commissioner, Ambala Division.

ORDER.

Parties present and counsel heard on both sides.

The facts of the case are given in the Collector's order, dated the 7th March, 1929. The learned Collector upheld an order by his Revenue Assistant, declaring that the present respondents were occupancy tenants paying no rent as *Dholidars* in respect of certain land attached to a shrine. The Revenue Assistant, in order to arrive at this decision, declared null and void a previous decree by the Naib Tahsildar of Jhajjar, in which the respondents had been held liable to pay rent for certain harvests. The Collector thought that the Revenue Assistant had no power to annul the said decree, but upheld the Revenue Assistant's decision nevertheless on grounds of equity.

There is no doubt about the equity of the case. The respondents have in their favour the *Jamabandis* and *Wajib-ul-arz*. The proper inferences from documents were apparently not appreciated by the Naib Tahsildar who followed an entry in the remarks column of the *Jamabandi* which merely stated a general liability on the part of the tenants to pay rent at certain rates. This entry was at variance with the entries in the rent column nor did it mention the *Dholidars* specifically. The Tahsildar's order was therefore, clearly wrong so far as the present respondents are concerned. At the same time the Revenue Assistant, though he handled the case rightly as falling within S. 77 (3) (i) of the Punjab Tenancy Act, was not, in my opinion, authorized to declare the Naib Tahsildar's decree null and void, even though it was an incorrect decision. My own course will be to uphold the Revenue Assistant's declaratory decree, but to cancel that part of the order which reflected upon the Naib Tahsildar's decree. In other words respondents must, in order to have the benefit of the Revenue Assistant's decision, make up their minds to pay the rent decreed by the Naib Tahsildar, and the Revenue Assistant's decree will only take effect from the subsequent harvests. I pass orders accordingly.

Parties will bear their own costs. Order announced.

Order accordingly.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 34 of 1930-31. (Decided on 31-8-31).

Dobson, F. C.

(SUBEDAR MAJOR) HARNAM SINGH

Applicant

Versus

JASWANT SINGH

Otherside.

**Zaildar—rules for the appointment—it is personal not hereditary
—Collectors', decision not to be upset—Sufedposh preferred.**

In the appointment of zaildars hereditary claims do not count at all—property is a qualification as well as services rendered by a candidate or his family, personal influence, character, freedom from indebtedness and fitness to repre-

sent the agricultural population of Zail. As a rule, the Collector's choice should not be disturbed. When other things are equal, a *Sufedposh* should be appointed.

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

These petitions relate to the appointment of respondent as a zaildar in the Ludhiana District. Petitioner No. (1) is *sufedposh* in the zail; petitioner, No. (2), is a *Lambardar*. I have heard respondent at length by counsel and petitioner No. (2) in person. I have not thought it necessary to hear counsel for petitioner, No. (1).

The principles involved are of some importance. Respondent was the son of the late Sardar Bahadur Sardar Gajjan Singh, a gentleman of great distinction. He was quite recently a minor, and still under the Court of Wards. He is also a very large landowner. In regard to land, neither of the petitioners can compare with him.

With these preliminary observations I turn to the rules for the appointment of *Zaildars*. I find that rule 5 states that hereditary claims do not count at all. On the other hand, property is a qualification, as well as services rendered by a candidate or his family, personal influence, character, freedom from indebtedness and fitness to represent, the agricultural population of the zail. Now as regards respondent he has excellent property qualifications, and the services of his family are undoubted. He has no personal influence to speak of being a youth still under Court of Wards. He is no more fitted to represent the agricultural community than petitioner, No. (1), since both are respectable Jat Sikhs. I now turn to the well-known judgment of Irving, Financial Commissioner, *Kalyan Singh v. Haidar* (1). It is there shown that, as a rule, the Collector's choice should not be disturbed, and that good service as a *sufedposh* should be given great weight in an estimate of personal qualities. Further, a *Sufedposh* should be appointed when other things are equal, but the Collector's decision should not be upset, unless he has failed to give due weight to the claims of a *sufedposh*, as between otherwise equal candidates. For the purposes of the present case, I find this judgment a little indeterminate, and, therefore, fall back on the rules. The Collector seems to have somewhat disregarded the fact that the post of a *zaildar* is a personal appointment, in which hereditary claims count for nothing. Rule 9 details the duties of a *Zaildar*, and it is clear that they can only be discharged by an active and competent man. The Collector was also greatly influenced by the family services of the respondent. I might almost say unduly influenced, because, none of these services can confer upon him the personal influence and experience which by reason of youth he could not possibly possess. The Commissioner was apparently reluctant to confirm this appointment, but eventually decided not to interfere.

Having regard to all the circumstances, I feel it is a case for interference. Petitioner, No. (2), is an inconspicuous person with no claim at all. He cannot compete with the other two parties. Petitioner, No. (1), is a retired Subedar Major of distinguished appearance. He has a pension and certain amount of land. There are some allegations that he is indebted, but they have not been substantiated. On the other hand, he claims to own land in Ferozepore. I conclude that he is adequately provided in the matter of land, though not comparable in this respect to the respondent. I have no doubt, however, that he is more fitted by reason of his years and antecedents to discharge the duties of a *Zaildar*, and he has justified his appointment as *Sufedposh* by satisfactory services. I must confess in these cases a strong leaning towards the claims or *sufedposhes*. It is hard for a deserving *Sufedposh* to find himself supplanted by a mere youth on the score of family services. I, therefore, accept the appeal of Subedar Major Harnam Singh, and set aside the order of the learned Collector, which was upheld by the Commissioner, appointing S. Jaswant Singh. The application of S. Harbans Singh is rejected.

Order announced. Parties to bear their own costs.

Application rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 123 of 1929-30, (Decided on 3-9-31.)

Dobson, F.C.

KARAM ILAHI and others

Plaintiffs-Applicants

Versus

HARI KISHEN and others

Defendants-Other side.

Punjab Tenancy Act, S. 84—suit to cancel a notice of ejectment—rejection of previous judgement between same parties—grounds for interference in revision.

Where petitioners apply for a cancellation of a notice of ejectment on the ground that their common ancestor occupied certain land and a judgment between the same parties which would prove the petitioner's claim, was not considered.

Held that was material irregularity and miscarriage of justice justifying interference in revision. 2 P. R. 1931 (Rev.) referred.

Case referred to Financial Commissioner by Commissioner, Ambala Division.

ORDER.

Parties present and Counsel heard on both sides. The facts of this case are briefly stated in the reference by Commissioner, Ambala, dated the 17th April, 1930. Petitioners brought a suit for cancellation of notice of ejectment on the ground that their common ancestor occupied certain land. It was dismissed by the first Court and an appeal rejected by the

Collector. The learned Commissioner has referred the case in revision.

The first point in issue is whether one Sahia was the common ancestor of petitioners. This was established by a judgment of the High Court, to which reference is made by the learned Commissioner, by another judgment, dated the 7th June, 1884, by Mr. Rahim Shah, E. A. C., and a third by Lala Bindra Ban, Sub-Judge, dated the 17th May, 1904. The first two of these judgments were not between the present parties, and the point cannot, therefore, be regarded technically as *res judicata*. The third, that of the Sub-Judge, was substantially between the present parties. But, for some obscure reason, it was not taken into consideration by the two first Courts. There is not the least doubt that the practical result of these judgments goes to establish petitioner's case. If I take them individually, however, they lack the necessary attributes for judicial proof. But I am concerned in revision to discover whether there has been defective jurisdiction, material irregularities or a miscarriage of justice. Failure to take the third judgment into consideration was, in effect, material irregularity, and the decision, resulting therefrom, amounts to a miscarriage of justice so far as petitioners are concerned. Moreover, the cumulative effect of all three judgments is overwhelmingly in favour of petitioners. On the point of intervention, the latest ruling is that of my predecessor Townsend, F. C., in No. 2, Punjab Record 1931, published in the March Quarterly Volume. If I decide not to intervene, I should leave petitioners without redress, and they would be wrongfully evicted from the tenancy. I accordingly accept this petition of revision, and set aside the order of the learned Collector dismissing petitioners' suit. The effect will be to cancel the notice of ejectment issued by respondents against them, and to grant them the status of occupancy tenants in the land in dispute under S. 6 of the Punjab Tenancy Act.

Parties to bear their own costs.

Order announced.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side.

Revenue.

No. 69 of 1930-31. (Decided on 4-9-31).

Dobson, F. C.

NATHA SINGH

Applicant

Versus

ABDULLAH and another

Otherside.

Punjab Tenancy Act—S. 80—Scope of—does not confer right specifically excluded by C. P. C.

S. 80 of the Tenancy Act does not confer a right specifically excluded by the C. P. C., which applies to all proceedings under the Tenancy Act in the absence of special rules.

—S. 88—Civil P. C. (1908), O. 38, r. 12—Potato crop—not to be attached before judgment.

A potato crop should not be attached before judgment.

Revision from the order of the Commissioner of Ambala Division.

ORDER.

Parties present and counsel heard on both sides.

The facts of the case are given in the order of the learned Commissioner, dated 21st April, 1931. It seems that petitioner obtained a decree for rent against one Abdul Hakim on the 25th August, 1931. Before this a certain potato crop had been attached by order dated the 19th March 1930. Respondent, one Abdullah, objected that the crop was his by purchase, but the court overruled this objection. However, in appeal, the Collector accepted it, and the petitioner then appealed to the Commissioner who concurred.

The potato crop should clearly never have been attached before judgment, *Vide* O. 38 r. 12, C. P. C., nor was there any appeal against the order dismissing Abdullah's petition. Under O. 21, r. 63, C. P. C., this order was not appealable, and I do not agree with the learned Commissioner that S. 80 of the Tenancy Act confers a right specifically excluded by the Civil Procedure Code which applies to all proceedings under the Tenancy Act in the absence of special rules.

I accordingly accept this application for revision of the learned Commissioner's order. The original decision dismissing Abdullah's petition will stand. At the same time the order of attachment was also *ultra vires* and will be set aside.

Parties to bear their own costs.

Application accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 55 of 1930—31 (Decided on 28-9-1931).

H. Culvert, F. C.

RAJA

Appellant

Versus

SARANG

Respondents.

Punjab Land Revenue Act, S. 28—Crown estate—appointment of Lambardar—Land Revenue Rule 17(i)—hereditary rule, not a predominant consideration.

The office of *Lambardar* falling vacant in a crown estate, the appointment by the Collector of a youngson of the late *Lambardar*, who was more intelligent, possessed of better physique and of better record than his elder should not have been interfered with by the Commissioner on the mere ground

of hereditary claims, as the rule applicable in such cases is Land Revenue rule 17 (i) rather than 17 (ii).

Punjab Land Revenue Act, S. 16, Cl. (1)—late lodging of appeal—revisional powers of Financial Commissioner.

Held, that objection to the late time at which the appeal was lodged need not be considered, as where a wrong rule is applied, the Financial Commissioner can revise it anytime.

Appeal against the order of Commissioner, Multan Division.

ORDER.

In this case, the estate is still the property of the Crown so Land Revenue Rule 17(i) applies. When a vacancy occurred in the office of Lambardar the Collector appointed youngers of the late Lambardar as being more intelligent, possessed of better physique and of a better record than his elder brother. It was a definite act of selection; the Collector was not in any way bound to respect hereditary claims, he exercised his discretion and based his decision on the merits of the two brothers.

On appeal the learned Commissioner seemed to think that the case came under Land Revenue Rule 17(ii) which is not correct. His order on appeal therefore seems to have been based upon a misunderstanding of fact.

Apart from the mistaken idea that hereditary claims were to be considered, there was no other reason for selecting the elder brother. In such a case it was not necessary to interfere with the exercise of a proper discretion by the Collector. He examined the claims of the candidates and definitely selected that one whom he thought would be the better officer. There was no sufficient reason to justify interference. I set aside the order of the learned Commissioner and restore that of the Collector.

Objections to the late time at which the appeal was lodged need not be considered as where a wrong rule was applied, the Financial Commissioner can revise at any time.

Costs to follow the event. Pleaders' fees twenty rupees.

Appeal accepted.

**IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB,**

Revision Side

Revenue.

No. 217 of 1930-31. (Decided on 3-10-1931.)

Miles Irving, F. C.

UJAGAR SINGH

Applicants

Versus

CROWN

Otherside.

Punjab Land Revenue Act, S. 16—Revision—Sufedposh dismissed—defence not heard—interference.

Where a *Sufedposh* was dismissed without giving him any opportunity of defending himself, held, it amounted to a material irregularity to justify interference. 2 P. R. 1891 (Rev.) followed.

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

I find that there was a material irregularity in the Collector's procedure in dismissing Ujagar Singh *Sufadposh* in that from the record he was not given an opportunity of defending himself. It has been ruled in *Surta v. Imin-ud-Din* (1) that this is necessary before dismissing a *zaildar* and this obviously covers the case of a *sufadposh*.

It is unnecessary to summon applicant, I set aside the order and return the case in order that the Collector may pass a fresh order after hearing applicant.

Order set aside.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 25 of 1930-31. (Decided on 24-10-1931.)

Miles Irving, F. C.

CHAUDHRI MEHR SINGH

Appellant

Versus

DEWAN FATEH SINGH

Respondent.

Zaildar—appointment of—Collector's selection should be given weight—exceptions—murder in family is a factor to weigh.

In the appointment of a Zaildar, a Commissioner should not be supported in reversing the collector's order unless there appears something flagrantly perverse in the estimation of the merits of the rival candidates. 1 P. R. 1913 (Rev.) referred to.

Murder in the family of the candidate is a factor to be weighed.

Appeal against the decree of Commissioner, Lahore Division.

ORDER.

I have heard counsels for both parties. Ch. Mehr Singh was appointed Zaildar of the Kanjur zail of Gurdaspur (Amritsar) District by the Collector. On appeal the Commissioner reversed the order and appointed Dewan Fateh Chand. The last ruling of this Court on the subject is my own reported as No. 2 of the first quarter of 1928. My attention has in this case been drawn to an unpublished ruling No. 41 of 1907 which appears in the Punjab Law Reporter 84 of 1908, which lays down that "when the Commissioner has reversed the order of the Collector, the finding of the former should be supported." This order being unpublished happened to be not before me when I wrote No. 2 of 2nd February 1928, or I would have taken the opportunity of dissenting from it. It is clear that, at any rate, from I P. R. of 1913 the practice of this Court has been not to support the Commissioner

(1) 2 P. R. 1891 (Rev.)

in reversing the Collector's order except in a very admitted class of cases, which are detailed in the above judgment. To quote from that judgment:—

"Apart from any question of positive disqualification attaching to the candidate chosen by the Collector, or legal defect in his order, there is, besides two unsupported cases, no recent authority for reversing his decision exception the ground that a rival has shown approved service as acting in the appointment to be filled, or if the appointment is a zaildari as Inamdar or Sufedposh.

In this case the Commissioner has reversed the Collector's order on the ground that the latter has attached undue weight to a murder committed by a member of the family of Dewan Fateh Chand. The Commissioner observes that he would not have interfered with the discretion of the Collector but because in his opinion the reason given by the former for ignoring the claims of Dewan Fateh Chand was not a strong one, and that from perusal of Collector's judgment, he presumes that Dewan Fateh Chand is more suitable for the post as compared with Ch. Mehr Singh.

Now, as a matter of fact, this conclusion cannot be drawn from the Collector's judgment. The Collector, no doubt, says that apart from this murder Dewan Fateh Chand would normally have an extremely strong claim for zaildarship and that because of the murder, despite the many excellent services and traditions of this family in the past, it is not expedient to appoint one of them, but he does not definitely say that apart from the murder he would have appointed Dewan Fateh Chand. On the other hand, he says as regards Ch. Mehr Singh, "this family also has a most wonderful record of Government services, even more striking than that of the Datt Brahman family of Kanjru," and proceeds to mention the services of Ch. Mehr Singh's father and of himself. But, apart from this, the fact of the murder in the family of Dewan Fateh Chand is inevitably one of the considerations in the way of making the appointment and the fact that the Commissioner is disposed to attach less weight to it than the Collector and in consequence thinks Dewan Fateh Chand a better man is not a reason for overruling Collector's choice. I desire to guard myself from the suggestion that any principle is here being introduced by which a specific disqualification attaches to a candidate because of the deeds of his relations. At the same time it is impossible to deny that a murder committed in the family is a fact, which like other facts has to be weighed. It happens that there is also a murder committed in the family of Ch. Mehr Singh, and this is also a fact which has to be weighed, but in accordance with the practice of the Financial Commissioners which has existed for many years and which is summarised in my judgment above referred to, it would not be in accordance with precedent except in the limited class of cases

mentioned, to support the Commissioner in reversing the Collector's order unless there appeared something flagrantly perverse in his estimation of the merits of the rival candidates arrived at after all facts have been weighed. I therefore accept the appeal with costs and appoint Ch. Mehr Singh as Zaildar.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 41 of 1930-31. (Decided on 1-10-1931).

Miles Irving, F. C.

DAYA SAHAI

Applicant

Versus

CROWN

Other side.

Government service—"Provisional substantive"—meaning of.

The form provisional substantive is unknown to the Fundamental Rules. It is a convenient expression coined by the Secretariat to denote a substantive Government servant, who, because he holds a place *vice* another whose lien has been suspended, is therefore liable to revert, if that Government servant returns. The confirmation of a provisional substantive Government servant denotes the fact that he has reached a stage in seniority, where he is not liable to revert by the reason of the return of the Government servant whose lien has been suspended.

Appeal from the order of Commissioner of the Lahore Division.

ORDER.

This appeal arises out of the confirmation of certain so-called "Provisional substantive" Naib-Tahsildars in which the appellant was passed over. There has been great misunderstanding in this matter of the confirmation of provisional substantive officers. It has been generally believed that the position of provisional substantive is some way probationary. This is not the case. The term provisional substantive is unknown to the Fundamental Rules—it is a convenient expression coined by the Secretariat to denote a substantive Government servant who, because he holds his place *vice* another whose lien has been suspended, is, therefore, liable to revert if that other Government servant returns. It is only by virtue of this liability that the provisional substantive Government servant differs from the substantive: he cannot lose his substantive post unless by reason of that reversion except it be as the result of a definite finding and sentence.

Therefore the effect of not confirming a Government servant in his turn is simply this, that it degrades him in seniority and makes him more liable to revert, if a Government servant whose lien has been suspended returns.

This is in short a penalty of reduction. Under the Subordinate Services Punishment and Appeal Rules (which are applied in practice

to Naib-Tahsildars) this penalty cannot be imposed without a procedure of inquiry which has not been adopted in this case. I have explained the confirmation of what is called a provisional substantive Government servant is a misleading expression—it only denotes the fact that he has reached a stage in seniority where he is not liable to revert by reason of the return of a Government servant whose lien has been suspended. As the expression provisional substantive is used conveniently to denote those who are so liable to revert, I direct that appellant, Daya Sahai, be shown as substantive in his place, and that M. Shah Mohammad be shown as provisional substantive.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 214 of 1930-31. (Decided on 5-10-1931).

Miles Irving, F. C.

FATAH KHAN

Applicant

Versus

Mst. HAYAT BIBI

Otherside.

Punjab Land Revenue Act, S. 16—revision—decision as to the custom applicable—no irregularity or error.

Where a decision has been reached as to what customary rule of law applies to the parties, and no matter of irregularity or error of jurisdiction is alleged in the revision petition, the Financial Commissioner will be abusing his powers of revision, if he were to interfere in revision.

Revision from the order of Commissioner, Rawalpindi Division.

ORDER.

On the death of a sonless proprietor, the Naib-Tahsildar ordered mutation in favour of his widow. On appeal the Collector ordered mutation in favour of reversioners considering that two squares of land which were separately entered in the widow's name were sufficient for her maintenance. On second appeal the Commissioner restored the order of the Naib-Tahsildar. I am now asked on revision to reverse the finding of the Commissioner.

The only question in issue is that of the Customary Law which applies to the parties.

In cases falling under the Land Revenue Act the Financial Commissioner is not bound, as he is in cases under the Tenancy Act, to observe the provisions of Section 115, Civil Procedure Code. But it has been held that these powers should only be exercised when there is real danger of a serious failure of justice. I would further lay it down that when the case is essentially of a judicial nature between parties, the Financial Commissioner should adhere very closely to the provisions of Section 115, Civil Procedure Code. In this case the only question is what customary rule of

law applies to the parties, and a decision has been reached which the Act states to be final. No matter of irregularity or error of jurisdiction is alleged. It would, I consider, be an abuse of the powers of revision under the Land Revenue Act, which are necessarily wide owing to the variety of matters dealt with under the Act, if I used them to interfere in circumstances in which the High Court would not interfere if the matter were the subject of the Civil suit. I, therefore, decline to interfere.

Applicant has not been summoned.

Revision rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 47 of 1930-31. (Decided on 21-10-1931).

Dobson, F. C.

Mst. NAZIR FATIMA

Applicant.

Versus

Mst. BISMILLAH BEGAM

Other side.

Punjab Land Revenue Act, S. 16—revision—Commissioner entertains in appeal which he was not empowered to do—interference.

Where the Collector had modified the original court's order in the applicant's favour and the Commissioner entertained that appeal, but he was not competent to do so, held, that it was a material irregularity justifying interference.

—Custom—inheritance—motherless daughter—preference to the widow of the deceased.

Held that according to custom a motherless daughter succeeds equally with her father's surviving widows.

Revision from the order of the Commissioner of Ambala Division.

ORDER.

This is an application for revision of an order dated the 30th August 1930, whereby the Commissioner of Ambala decided a mutation of inheritance arising out of the death of one Iqbal Hussain, who left two widows, Mst. Bismillah Begam and Mst. Kalsum Fatimah, and one daughter Mst. Nazir Fatimah. I have only found it necessary to hear counsel for the respondent, Mst. Bismillah.

The geneological tree and the facts of the case are given in the order of the learned Commissioner. The Collector, reversing an order by a lower Court, gave the inheritance to the two widows and Mst. Nazir Fatimah in equal shares. The learned Commissioner relying on the Customary Law of 1872 excluded Mst. Nazir Fatimah and granted mutation to the two widows in equal shares. I find the learned Commissioner's interpretation of the *Riwaj-i-am* to be technically correct but there are other considerations to be borne in mind. With the lapse of

time the position of a motherless daughter, which the learned Commissioner admits to be unfortunate, has been considerably strengthened. Thus in *Gobinda v. Nandu* (1.) a daughter's son was held not to be excluded merely because his mother had predeceased her father. But there is a more important ruling than this, which applies to the very tribe concerning this case, namely Shia Sayyads of Palwal. I refer to *Zahid Hussain v. Karam Ali* (2). It was there determined that daughters succeed to their fathers' property in the absence of direct male descendants. This decision clearly overrules the *Riwaj-i-am* of 1872. It is also in accord with equity and justice that the surviving daughter of a deceased wife should not be placed in a worse position than the two surviving widows of the same husband. Further, the said widows have in this case daughters of their own, and it is manifestly unjust that those daughters should eventually succeed to a better portion than Mst. Nazir Fatima, whose mother happens to be dead. There is one other consideration. I think the learned Commissioner was not competent to entertain the appeal of Mst. Nazir Fatima in view of Mr. King's ruling in *Rai Faiz Muhammad Khan, v. Crown* (3), since the Collector had modified the original Court's order in her favour. Mst. Kalsum apparently also admits Mst. Nazir Fatimah's claim to 1/3rd share.

In all the circumstances I feel justified in accepting this revision and restoring the Collector's order, whereby the property of Iqbal Hussain will be mutated in favour of Mst. Nazir Fatima and the two widows in equal shares. Order announced.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 2 of 1929-30. (Decided on 20-10-1931.)

Miles Irving, F. C.

KHUSHI MOHAMMAD

Plaintiffs-Appellants

Versus

MAHANT GOBIND DASS

Otherside.

Punjab Tenancy Act, S. 84—agreement not admitted as required by the rule—finding based thereon is revisable—material irregularity—Civil P. C., O. 13, R. 4.

In an application for enhancement of rent, the application was rejected on the basis of an agreement produced by the defendant and it appeared that the agreement was not admitted as required by Order 13, Rule 4, C. P. C. Held, that the lower Court committed a material irregularity in basing its conclusion upon such agreement and that the document should not form part of the record and should be returned to the party tendering it.

(2) 18 P. L. R. 1911.

(1) 3 Lah. 450.

(3) 6 L. L. T. 37.

—Punjab Tenancy Act, S. 21— application for enhancement for rent—fall in price—rent should not be increased.

Held, that enhancement of rent should not be allowed, where there has been a fall in prices since the presentation of the plaint.

Revision against the order of Commissioner, Jullundur Division.

ORDER.

This is an application for enhancement of rent which has been rejected and appeal rejected. So far as the application was rejected on the basis of an agreement dated 1851, I find that there are grounds for revision. The agreement is not admitted as required by O. 13 R. 4, and there is in my opinion a material irregularity in basing any conclusion from it. It does not in fact form any part of the record. I, therefore, so far accept revision that I set aside any part of the finding based on the agreement and order it to be taken off the record and returned to the party tendering it.

I find no reason to upset the concurrent finding of the two courts that the defendant holds under Section 5 (i) (d).

As to whether it is proper to enhance the rent on the merits the Commissioner has expressed no opinion, as he has decided (as I have held improperly) that it cannot be enhanced under the agreement. The trial court has found on the merits that there is no ground for enhancement. In view of the fall in prices that has taken place since the plaint was presented I do not think that the claim can be conceded at present.

I, therefore, except as above stated, decline to interfere. The plaintiff is at liberty to bring another suit, and defendant is at liberty to produce his agreement which if properly admitted may be considered in its merits, the case will be *res judicata* only in respect of the finding that the tenancy is under Section 5 (i) (d).

Each party to bear its own costs.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 1. of 1930-31. (Decided on 22-10-1931.)

Dobson, F. C.

DIPO MAL

Applicant

Versus

JIWAN

Respondent.

Punjab Land Alienation Act, S. 9—person having status of a Rajput Tur from birth—adoption of profession of Qasab and effecting of mortgage—mortgage to be brought in accordance with provisions of Land Alienation Act.

A person having the status of a Rajput Tur from his birth adopted the profession of a Qasab and while so, effected a mortgage in the capacity of a Qasab. Held, that his adoption of the profession did not alter his status but that the mortgage must be brought in accordance with the provisions of the Land Alienation Act.

Case forwarded by the Commissioner of Ambala Division.

ORDER.

Parties are present and counsel have been heard on both sides.

The facts of this case are stated in the order of the learned Commissioner, dated the 9th December 1930. It is quite clear that the respondent is entitled to be regarded as a Rajput Tur. As such he could only make a mortgage in accordance with the provisions of the Land Alienation Act. Actually the mortgage in question was made by the respondent in the capacity of a Qasab, subject to none of the limitations which would have been necessary had he been recognized as a Rajput Tur. The Naib Tahsildar accordingly cancelled the mortgage outright. This was not correct. He should have reported to the Deputy Commissioner for necessary action in order to bring the mortgage within the purview of the Land Alienation Act. In order to regularise the decision, it is necessary for me to take action under Section 16 of the Land Revenue Act, and this is the purport of the learned Commissioner's reference.

There is no obscurity as to the facts. I accordingly set aside the order of the Naib—Tahsildar, and direct the Deputy Commissioner to pass such order under Section 9 of the Land Alienation Act as may bring the terms of the mortgage in question into accordance with the terms of mortgage permitted by or under the Act. As to the principle involved, I am in agreement with the learned Commissioner in the view that the respondent's change of caste in the revenue papers undoubtedly had retrospective effect. It is not a question of adopting a new status. This respondent had from his birth the status of Rajput Tur and did not alter it by the adoption of a profession such as that of qasab, or by being known as a qasab.

Order set aside.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side

Revenue

No. 213 of 1930-31. (Decided on 20-10-1931.)

Sheikh Asghar Ali, F. C.

CHUHAR KHAN

Applicant

Versus

CROWN

Respondent.

Grant—mere absence from Chak—no ground for confiscation.

Where a grant is given to a person and he has acquired occupancy rights in it, and the land is fully under cultivation, the mere absence of the grantee is no ground for confiscation of the whole grant.

Held that a fine of Rs. 100 would be sufficient. 3 P. R. 1914 (Rev.) referred to.

Revision petition against the order of Commissioner, Multan Division.

ORDER.

This is an application for the revision of the order dated the 24th of June, 1931, of the Commissioner, Multan, rejecting the appeal of Chuhar Khan. Chuhar Khan's square has been confiscated for absence from his chak. This square was given to him about 15 years ago, and he acquired occupancy rights in it about 10 years ago. The land is fully under cultivation, and the residential *ahata* is complete, although the patwari lives in it. 3, Punjab Record (Revenue) 1914 is in point. Although the applicant's presence in the chak is technically necessary, yet this is not a case in which the whole grant should have been confiscated. I think a fine of Rs. 100 would meet the ends of the case. Otherwise I accept the application, and restore the square to the applicant on his paying Rs. 100.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Appellate Side

Revenue.

No. 37 of 1930-31. (Decided on 22-10-1931).

Miles Irving, F. C.

YUSAF

Appellant

Versus

MOHAMMAD ASLAM

Respondent.

Lambardar—succession—father convicted of murder—eligibility of son.

Held, that the offence of murder is one which affects the eligibility of the heir whenever committed and that the heir can be passed over on that account, though the father be in jail.

Appeal from an order of the Commissioner of the Lahore Division.

ORDER.

Nawab Lambardar was convicted of murdering his cousin and was sentenced to 14 years, rigorous imprisonment. The Collector appointed in his place his infant son. The Commissioner accepted the appeal of one Mohammad Aslam. An appeal has been preferred to me on behalf of the son of the dismissed lambardar.

It is urged in appeal that as Nawab is in Jail his son cannot be under his influence, an argument which I observe would have had still greater force if Nawab had been hanged. But it is unnecessary to deal with the case under this portion of Land Revenue Rule 17 (ii) (b). That clause also provides that when a headman has been dismissed for a serious offence the

Collector may refuse to appoint any of his heirs whose eligibility is affected by such an offence.

This is a very wide provision, and in my opinion leaves it open to the Revenue authorities to decide on general grounds in each case whether the heir's eligibility is in point of fact affected by the offence. In the case reported in *Chain Singh v. Inder Singh* (1)

Mr. Townsend in passing over the heirs of the Lambardar convicted for a crime of violence observed that it should be understood that conduct of such nature entirely destroys the family claims to the Lambardari, by which I understand him to mean that such an offence affects the eligibility of the heir. And this proposition may in my opinion extend beyond the limits of the Rohtak District to which special note was made in Mr. Townsend's judgment. It may be without hesitation affirmed that the offence of murder is one which affects the eligibility of the heir whenever committed and that the heir can be passed over on that account. In this particular case the family has a bad record, the father of the dismissed lambardar was passed over because of a conviction. I see no reason for interference.

Appeal rejected with costs.

Appeal rejected.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision side

Revenue,

No. 65 of 1930-31. (Decided on 20-10-1931).

Sheith Asghar Ali, F. C.

MANSABDAR KHAN

Applicant.

Versus

Otherside.

CROWN

Grant-acquisition of occupancy rights and building a residential house-absence of technical residence no ground for entire confiscation.

Where a grant was made in 1915 and the grantee acquired occupancy rights and has a residential house in the Chak according to his station in life, the confiscation of the whole grant for absence of technical residence is wrong. A fine of Rs. 100 would be sufficient. 3 P. R. 1914 (Rev) relied on.

Revision against the order of Commissioner, Multan Division.

ORDER.

Mansabdar's sqaure was confiscated on the 5th of August, 1930, and his appeal was dismissed by the Commissioner on the 7th October, 1930. Mansadbar applies for revision of the Commissioner's order.

The grant was made in 1915, and the applicant acquired occupancy rights in 1922. Mr. Calvert inquired if the petitioner had constructed

(1) 1929 L. L. T. 46.

residence in the Chak to the satisfaction of the Collector. The report is that he has a residential house in the Chak according to his station in life. 3 P. R. (Rev.) 1914 is in point. Although technically residence is essential, yet the circumstances did not warrant the confiscation of the whole grant. I think a fine of Rs. 100 will meet the ends of the case, otherwise I accept the application and restore the square to the applicant on his paying Rs. 100.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 9 of 1929-30. (Decided on 23-10-1931)

Miles Irving, F. C.

PREM SINGH

Applicant

Versus

KISHEN SINGH and others

Respondents.

Punjab Tenancy Act, S. 49—tenant not having a right of occupancy but holding for a fixed term—no arrear of rent—liable to ejectment at the expiration of term.

A tenant not having a right of occupancy but holding for a fixed term can under S. 49 of the Tenancy Act be ejected from his tenancy at the expiration of the term even if there is no arrear of rent at all.

(ii) Civil P. C., S. 115—mistake of law no—ground for revision—flagrant breach of justice—cause for revision.

Though mistake of law is no ground for revision under S. 115 C. P. C. Courts will interfere in cases of flagrant breach of justice.

Revision against the order of Commissioner, Lahore, Division.

ORDER.

The land in question was mortgaged with possession in 1909 and by a registered lease of the 1st. November 1914, leased for one year to the mortgagor. The mortgagee sued for ejectment and arrears of rent. The trial Court dismissed the suit on grounds relating to the amount of rent without observing that a tenant not having a right of occupancy but holding for a fixed term, can under Section 49 of the Tenancy Act be ejected from his tenancy at the expiration of the term even if there is no arrear of rent at all. The Collector rejected the appeal on the ground that a mortgagee who has given the area mortgaged back to the mortgagor for cultivation of definite terms of agreement is not entitled to eject that mortgagor.

Normally under S. 115, C. P. C., a mistake of law is not a ground for revision, but Courts have interfered in flagrant cases, and I cannot imagine a more flagrant case than that before me. It is an extremely common thing for a mortgagee to put in the mortgagor as his tenant and I can imagine no more perverse proposition than that which would suggest that the mortgagor is not in those circumstances subject to the ordinary

liabilities of a tenant, whether as a tenant-at-will, or as in this case, a tenant holding for a fixed term.

The mortgagee applicant has before me abandoned that part of his suit which relates to arrears of rent and only asks for ejectment. To this he is fairly entitled under S 49, or alternatively, if there be acquiescence the tenant has become from a trespasser a tenant-at-will, as against a tenant-at-will. I therefore accept the appeal and a decree for ejectment from the land in suit be issued in accordance with the ordinary procedure. I order the decree with costs.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 2 of 1930-31. (Decided on 20-11-1931).

Miles Irving, F. C.

L. RAM LAL and others

Applicant

Versus

CROWN

Otherside.

Stamp Act—separation of partnership—mutual release—an incident of this division—distinction between release and partition deeds.

Where three partners carrying on a partnership business separate and mutually release one another, it is a partition and not a release, though mutual release is an incident of the division.

A deed of release is a one-sided document and binds the executant alone while a partition is an agreement between two or more persons who are all bound by it.

Revision against the order of Collector, Lahore.

ORDER.

The deed in this case recites as follows :—

1. Chajju Ram and Ram Lal Aulakh and another were carrying on in partnership.
2. Chajju Ram desired to separate by taking $\frac{1}{3}$.
3. Chajju Ram had received one third.
4. Chajju Ram and the separated partners mutually released one another.

Chajju Ram and Ram Lal Aulakh etc. are called throughout the separating partner and the separated partners, and the deed clearly is one by which co-owners divide property in severalty. To argue that because a mutual release is an incident of the division that the partition becomes a release is in my view absurd. Moreover a deed of release is a one sided document and binds the executant alone while a partition is an agreement between two or more persons who are all bound by it. The Collector's order only imposes a penalty of 10/- whereas the document appears to have been described

as a release with intent to defraud, and a substantial penalty, if not the whole 10,000 should have been inflicted. Further the Collector has charged the duty on the smaller share instead of the larger in spite of the plain language of the article. I have however no power to increase an assessment or penalty and simply decline to interfere.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 35 of 1930-31. (Decided on 21-11-31.)

Miles Irving, F.C.

SARDAR TEJA SINGH

Applicant.

Versus

RAHIM BAKHSI

Otherside.

Punjab Tenancy Act, S. 84—wrong decision on a point of law—no ground.

A wrong decision on a point of law is generally no ground for revision.

Revision referred by the Commissioner, Lahore Division.

ORDER.

This case has been referred for revision by the Commissioner of Lahore. Both parties expressed their desire to be represented before me but the applicant, though served, has not put in an appearance. The ground for revision is that the Collector gave a wrong decision of law that no valid appeal has been presented in the period of limitation. A wrong decision on a point of law is generally no ground for revision, but apart from this the case is dismissed *in absentee*.

Order with costs.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF
THE PUNJAB.

Revision Side.

Revenue.

No. 7 of 1929-30 (Decided on 28-11-1931.)

Miles Irving, F.C.

NAWAB and others

Applicants.

Versus

GANDA MAL

Otherside.

(i) Limitation Act, S. 5 - applicability to proceedings before Revenue Officers.

Held S. 5 of the Limitation Act, is applicable to proceedings before Revenue Officers.

(ii) Punjab Land Revenue Act, S. 17 - mutation—refusing to summon interested parties—irregularity.

Held, that sanctioning a mutation without summoning the interested parties is an irregularity.

(iii) Puniab Land Revenue Act, S. 37—mutation—sale of equity of redemption—registered deed—effect must be given to—lapse of time, no bar.

Formal effect to a registered deed should be given inspite of receipt of consideration being denied, as a deed is *prima facie* proof of both execution and receipt of consideration. Lapse of time since the execution of the deed is no bar as S. 37 does not prescribe any limitation.

Case reported by the Collector of Gujranwala District, for the orders of the Financial Commissioner.

ORDER.

This case has been referred to me by the Collector of Gujranwala on the ground that an appeal before him was barred by limitation and that S. 5 of the Limitation Act did not extend to mutation proceedings before revenue officers. This view is wrong. It is true that S. 153 of the Land Revenue Act, merely refers to the computation of the period as being governed by the Indian Limitation Act, and it has been generally held that general provisions of the Limitation Act including S. 5 are always applicable to proceedings under special or local laws, but it has always been accepted that revenue officers are entitled to apply the principles of the Limitation Act including S. 5.

The irregularity on which the case was sent up for revision was that certain interested parties were not summoned when mutation was sanctioned. I have now all parties before me and it is more convenient to decide the case on the merits than to return it to the Collector. The mutation in question refers to the sale of an equity of redemption made by registered deed on 24th October 1893. Formal effect to a registered deed should be given inspite of consideration being denied as a deed is *prima facie* proof of both execution and receipt of consideration and it is strange that mutation was not effected on the receipt of the registration memo. The only reason for refusing mutation in this case that can be alleged is the length of time which has elapsed. No period of limitation is laid down under S. 37 of the Act and in view of the fact that no question of possession arises as the transfer is only one of equity of redemption, I see no reason for interfering. In view of the fact of long delay in taking action, I pass no order as to costs.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Appellate Side.

No. 36 of 1930-31. (Decided on 12-11-1931.)

Miles Irving, F.C.

JALAL

Versus

MUTALLI

Lambardari—selection by collector to be maintained.

Revenue.

Appellants.

Respondent.

Where the village is Bhayachara and all that can be said is that the owners are descended from certain persons, the division of the village into pattis or the nearness of relationship of the candidate to the previous Lambardar are matters of opinion which should not override the Collector's appointment. 1 P.R. 1918 relied on.

Appeal against the decree of the Commissioner of Rawalpindi Division.

ORDER.

A new post of lambardari has been created in Mauza Bar Musa, Tahsil Phalia, District Gujrat, to which the Collector appointed Jalal lambardar. The Commissioner accepted the appeal of Mutalli and appointed him lambardar, against which order Jalal appeals. There is a very clear ruling in 1 P. R. 1918 that the selection by Collector should normally be maintained. It does not seem on what reason the Commissioner has departed from this principle. The only reasons are (a) that Mutalli is nearer related than Jalal to Ghanda whose post of lambardari was reduced in 1857, and (b) that there are three pattis in the village of Rusmat Khan, Khushi and Mian Khan, and that Jalal and the two existing lambardars belong to that of Khushi for which reason Mutalli who belongs to that of Rusmat Khan should be for administrative reasons preferred.

As a matter of fact, it is not correct to say that there are three pattis in the village. There are no pattis specially recognised. The village being bhayachara all that can be said is that the owners are descended from Mian Khan, Khushi and Rusmat Khan. The extent to which importance is to be attached to this division of the village or to the relationship with Ghanda is a matter of opinion. Neither consideration gives any final claim to the lambardari. I cannot agree with the Commissioner that the Collector's finding can be regarded as in any way perverse. For the above reasons I accept the appeal and direct Jalal to be appointed.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side Revenue

No. 13 of 1929-30. (Decided on 20-11-1931).

Miles Irving, F.C.

DIWAN SINGH.

Appellant.

Versus

UJAGAR SINGH.

Respondent.

Lambardar—succession—father guilty of causing grievous hurt—right of the heir—Land Revenue Rule 17 (2) (b)—power of Collector.

Held that Lambardars must realize that participation in violent crime entirely destroys the family claims to headmanship. Land Revenue Rule 17 (2) (b) gives the Collector power to refuse to appoint an heir, where eligibility is affected by such offence or disqualification or who may reasonably be supposed to be under the influence of the dismissed lambardar to an undesirable extent.

Lambardar—dismissal.

Held that the offence of committing grievous hurt in an affray is one which justifies dismissal under Land Revenue Rule 16 (1) (11) (a). 5 P. R. 1886 (Rev.) dissented 1923 L. L. T. 20; 1926 L. L. T. 22; 1929 L. L. T. 46 discussed.

Appeal from the order of the Commissioner of the Lahore Division.

ORDER.

Bela Singh, *Lambardar* of Bhattian, was dismissed in consequence of conviction and sentence of five years' rigorous imprisonment under S. 326, I. P. C. in an affray between two branches of the same family, to the other of which belongs the appellant Dewan Singh. The affray was a most serious one and premeditated. In the words of the Sessions Judge, "the members of Bela Singh's party had previously collected in Bela Singh's *haveli* with the intention of preventing the other party from making use of the manure pit. They had armed themselves with weapons, either deadly or likely to cause death." The Sessions Judge held that the common intention of the accused was to provoke a fight in which they were prepared as shown by their choice of weapons to commit grievous hurt and grievous hurt was committed by all members of the party, of whom two were also convicted of murder. In consequence of this, the Collector passed over the son of Bela Singh, the respondent Ujagar Singh, who was away from this village when the affray took place, and appointed the appellant. On appeal, the Commissioner appointed the son of Bela Singh on grounds that it is necessary for me to go into with care, as they involve important questions of principle in the appointment of *Lambardars*. The learned Commissioner says as follows:—

Ujagar Singh is 20 years of age and I see no reason to suppose that if, which is unlikely, he comes under the influence of his father 5 years hence, he is likely to develop such moral turpitude as would unfit him for the post of *Lambardar*,—*vide Sondhi v. Amir Singh* (1) and *Shiv Lal v. Lalu*."

As regards the first ruling, it is not under the Land Revenue Rules at all. Under the previous Act, Col. Davies, Financial Commissioner, found that the offence of grievous hurt in an affray was not which would ordinarily disqualify a man for the post of *Lambardar*. This ruling, which throws an interesting light on the conditions of life 45 years ago in the Punjab, is not, I consider, applicable to the year 1931. I am definitely of the opinion that the offence of committing grievous hurt in an affray is one which justifies dismissal under Land Revenue Rule 16 (ii) (a). I definitely dissent from the ruling in *Sondhi v. Amir Singh* (1) as not applicable to present day conditions.

The learned Commissioner then refers to the case *Shiv Lal v. Lalu* (2). This case is by no means illuminating as it does not specify the reason for which a *Lambardar* was passed over. It has not been published and in my opinion should not be quoted as an authority, as it

(1) 5 P. R. 1886, Rev.

(2) 1923 L. L. T. 20.

does not, in fact, give any guidance, I have then been referred to the case *Muhamad Ghafoor v. Balu* (3). The *Lambardar* in this case was dismissed for failing to report an outbreak of small-pox and I need not waste further time on its relevance in this case. The really important ruling on the subject is one by Mr. Townsend, Financial Commissioner, in case No. 3 of 1928-29. It is reported as *Chain Sukh v. Indar Singh* (4), but, as it has not been published in the *Punjab Record* I think it necessary to reproduce its substance, which is as follows:—

"The *Jats* of Rohtak are notoriously liable to sudden outbreaks of violent crime. To appoint Indar Singh, son of Ram Kala, *lambardar* in place of his father, who is undergoing a sentence of 5 years' imprisonment for taking part in an attempt to murder, apparently an hereditary enemy, as the Commissioner says, is, in my opinion, entirely wrong, even subject to the conditions of Sarbarahi and the like he laid down. *Lambardars* must realise that conduct such as that of which Ram Kala was guilty entirely destroys the family claims to headmanship. Collector considered Chain Sukh eminently suitable for the post. I agree, his military record is admirable. Hereditary considerations do not come into account. I, therefore, accept the appeal."

This case is absolutely on all fours with the present except with reference to the criminal activities of the *Jats* of Rohtak, which is not really essential to the principle. In any case, I am prepared to extend the principle laid down by my learned predecessor for the Punjab as a whole, and to re-affirm, as regards the Punjab as a whole, the principle that *Lambardars* must realize that participation in violent crime entirely destroys the family claims to headmanship. Land Revenue Rule 17 (2) (b) gives the Collector power to refuse to appoint an heir, whose eligibility is affected by such offence or disqualification, or who may reasonably be supposed to be under the influence of the dismissed *lambardar* to an undesirable extent. I do not think it necessary to bring in the question of the influence of the dismissed *lambardars*. The disqualification would be just as pronounced if the late *lambardar* had died in the riot which he had provoked. The reason for passing over the heir in such a case as this, is that, in a family quarrel of this nature, the eligibility of the heir is, as laid down by my predecessor, affected by the offence itself. In making this ruling, I guard myself from the suggestion that I am adopting the principle of the taint in blood. The principle of exclusion which I make explicit is that the heir is excluded, neither because he is under his father's influence, nor because his father merely committed a serious crime, but because the nature of the crime, namely, aggression in the pursuance of a family or tribal feud, necessarily involves the eligibility of the heir. For these reasons I accept the appeal with costs and direct the appointment of Dewan Singh.

Appeal accepted.

(3) 1926 L. L. T. 22 : 1926 P. C. L. 11 (Rev.) (4) 1929 L. L. T. 46,

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.
Revision Side Revenue.

No. 48 of 1930-31. (Decided on 31-10-1931).

Dobson, F. C.

BHAGA and others

Applicants

SOHAN SINGH and others

Respondents.

Punjab Tenancy Act, S. 70—Provisions mandatory—suit for enhancement of rent—issue regarding compensation—necessary.

In a suit for enhancement of rent, as the provisions of S. 70 of the Tenancy Act are mandatory, it is essential for an issue regarding compensation to be framed and a decision reached on the point, even though no claim is stated and there is no evidence to show that it is due.

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

1. Bhaga etc.

v.

Sohan Singh etc;

2. Nathu Ram etc.

v.

Mihan Singh etc.

In case No. 1 parties were present with counsel who were heard on both sides. In case No. 2 parties were present and heard respondent alone being represented by counsel.

These cases are very similar, and the point in issue is the same in both. A single order will therefore suffice.

In each case the Collector decreed an enhancement of rent, which was confirmed in appeal by the Commissioner. The judgments being concurrent on question of fact, there is no justification for me to interfere on the score of irregularity or jurisdiction. In each case, however, the mandatory provisions of S. 70 of the Tenancy Act regarding compensation were ignored. It is true that petitioners have not stated a claim and there is no evidence to show that compensation is due. But it is essential for an issue to be framed and a decision reached on the point. These petitions are accordingly accepted, and the cases will be remanded to the lower Court for a decision as directed above.

question of irregularity or jurisdiction arises. In case No. 2 the only point for adjudication was that raised in the first case, so the decision in the preceding paragraph holds good in both cases.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 55 of 1930-31. (Decided on 21-11-1931.)

Miles Irving, F. C.

MOHAN LAL

Defendant-Applicant

Versus

MOHAMMAD HAYAT and another

Respondent.

Punjab Tenancy Act, S. 15 - co-sharer's suit for recovery of rent—tenant not liable to divide rent between co-sharers.

In a suit by a co-sharer alleging that the tenant had conspired with the other co-sharer and paid him the whole of the produce, held. that the tenant was not bound to divide the rent between co-sharers, that no decree could be passed against him even if it was found that he paid the whole rent to the other co-sharer and that the tenant was no party to the suit.

Revision against the order of Commissioner, Multan Division.

ORDER.

Plaintiff, Mohammad Hayat, is the co-sharer of land with Mohan Lal, lessee, the land being cultivated by the predecessor of Thiraj his tenant-at-will. The plaintiff sued his co-sharer and the tenant-at-will on the ground that defendants, having conspired between themselves, had taken the whole of the plaintiff's share of the produce. The trial Court found that the defendants had taken the whole of the produce and, consequently, passed a decree. The Collector said that the onus of this question had been wrongly placed on the defendants to show that they had not taken the plaintiff's share, and placed the onus on the tenant alone. The Commissioner found that the point of onus was technical only and restored the prior Court's order; hence, an application for revision, which can only lie on material irregularity in the matter of placing the onus and also on another point that the proceedings are without jurisdiction, because, the plaint was not presented within time.

As regards the first point, I think the Courts throughout have neglected to observe that the tenant is not bound to divide rent between co-sharers (Tenancy Act, S. 15). There is, therefore, really no force in the allegation in the plaint that the tenant by collusion with one landlord paid the whole of the produce to him. He has the right to do so, if for no other reason than to save himself trouble. Therefore, on the allegation in the plaint, the tenant should not be a defendant at all. Supposing, it was

found to be true that he paid the whole to the defendant, no decree could be passed against him. He, therefore, should not be brought into Court at all except as a witness. On the facts of the case I am not disposed to depart from the finding of the trial Court.

The contention, that the plaint was presented after the time the suit had abated was taken in the trial Court and on first appeal. It was decided in the plaintiff's favour in the trial Court. The first appellate Court did not deal with it. The allegation that the plaint, filed on 18-2-26 after its return on 14-2-26, was finally decided by the Commissioner on 21-12-27 and that decision is final and binding. The issue, whether the representative of Mohabata had not been appointed within time, was struck in the trial Court, and was decided against defendant for reasons that appear sound; moreover, as I have said, I do not consider that the tenant was a necessary party to the suit.

I decline to interfere.

Petition dismissed.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 21 of 1929-30. (Decided on 28-11-1931.)

Miles Irving, F. C.

NABI BAKHSH.

Appellant

Versus

FAIZ RASUL.

Respondent.

Lambardar—appointment—passing over of heir—effect.

Held, that when an heir, whether minor or not, has been passed over, so far from there being a possibility of any presumption that this is for immaterial reasons, he has been passed over for good, and there is no alternative but to make the appointment under the rule of primogeniture deriving from the last incumbent of the post. 2 P. R. 1930 (1st. quarter) followed 7 P. R. 1896 referred.

Appeal from the order of the Commissioner of the Lahore Division.

ORDER.

Sardara, *Lambardar*, was dismissed for grounds, which cannot be stated with certainty, because, the records have been destroyed. It may be conceded for the purpose of this case that he was dismissed because he became a *Darvesh*. He left a minor son, Faiz Rasul, who was passed over for some reason which similarly cannot be ascertained, and he was succeeded by his younger brother Nawab. Nawab has now died leaving a son, Nabi Bakhsh, appellant, who was appointed *Lambardar* by the Collector. The Commissioner reversed the order, referring to *Waryam Singh v. Tharaj Singh* (1), and observing that, as Faiz Rasul, son of Sardara, was a minor when Nawab was appointed *Lambardar*, it ought to be presumed, in the absence of evidence to the contrary, that he was passed

(1) 7 P. R. 1896. Rev.

over on immaterial grounds. He has advanced his claim at his first opportunity when the succession opened out.

7 P. R. of 1896 refers to the case of a Lambardar, in which the appointment, passing over the senior line, was made under the old rules under which it was impossible to appoint a minor, and the same applies to other rulings, which have been quoted, in which there has been a reversion to the senior line. This old rule was referred to in 2 P. R. 1930, in which it is observed that Land Revenue Rule 17 (ii) of the present rules must be interpreted strictly, and that, even when the heir has been passed over under the old rules, the rule of primogeniture must be adopted, unless there is a note by the Revenue Officer to the effect that claims should be considered when the post falls vacant again.

In this case, however, the question of the old rules does not apply as the appointment, passing over the minor son, was made under the new rules, and the only question is that of the interpretation of the present rules. These rules are, as observed in (2), to be interpreted strictly; and their effect is that, when an heir, whether minor or not, has been passed over, so far from there being a possibility of any presumption that this is for immaterial reasons, he has been passed over for good, and there is no alternative but to make the appointment under the rule of primogeniture deriving from the last incumbent of the post. I, therefore, accept the appeal, and, reversing the Commissioner's decision order the appointment of Nabi Bakhsh, appellant. Order with costs. Pleader's fee Rs. 20.

Appeal accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate Side

Revenue.

No. 44 of 1929. (Decided on 9-12-1931.)

Miles Irving, F. C.

Appellant

BULANDA

Versus

Respondent.

SAWARAN SINGH

**Lambardar—succession—working still for illicit distillation—
village of lambardar—dismissal—nephew not eligible as being under
his influence.**

Where a Lambardar was dismissed on account of a working still notorious for illicit distillation, being found in his village, his nephew was held not eligible for office, as he was presumed to be under the previous Lambardar's influence.

Appeal against the decree of Commissioner, Lahore Division.

ORDER.

In this case Gopal Singh, Lambardar, was dismissed, because, a working still was found in his village, which was notorious for illicit distillation.

(2) 2 P. R 1930

The Collector passed over his nephew, Sawaran Singh, as being under his influence and appointed Bulanda who is a Muhammadan Jat. The Commissioner accepted the appeal and appointed the nephew Sawaran Singh. The Commissioner referred the case to me for a ruling but obviously misunderstood the purport of it. It is clearly a matter of common sense that in a village, where illicit distillation is rife, the nephew of a dismissed Lambardar, who is only about 18, should be under the influence of his uncle, I quite agree with the Collector that Bulanda's would be a very suitable appointment with the object of introducing an element in the village which will stand out against illicit distillation, but unfortunately he is or was when these papers were prepared seriously in debt. I think the case must be considered a-fresh in view of the doubts as to Bulanda's insolvency. Therefore, while I so far accept the appeal that I consider Sawaran Singh unsuitable, I return Bulanda's appeal and the revision of Kharak Singh for a fresh decision by the Collector.

Case remanded.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE PUNJAB.

Revision Side

Revenue.

No. 126 of 1929-1930. (Decided on 22-12-1931.)

Miles Irving, F. C.

NATHU

Plaintiff-Applicant

Versus

LALA MEHR CHAND and others

Defendants-Otherside.

Occupancy rights - agreement conferring rights of occupancy on persons breaking up culturable land - rights in respect of a plot.

Where a claim for occupancy rights is based on agreement which confers rights of occupancy in three persons, S, N and B, on condition that they should stay in the village and break up culturable land and pay rent, held, that in accordance with the ordinary practice no right is conferred in respect of land acquired by the descendants of S, N and B otherwise than by breaking it up or, if already cultivated and abandoned by taking it over.

Revision against the order of Commissioner, Lahore Division.

ORDER.

The claim for occupancy rights in this case is based on a lease or agreement made in 1854 by the owner of the village. The lease refers to Chathu Bathu, but, by a comparison with the revenue record I have no doubt that this is another name for the village known as Taragarh. The agreement relates that, if three persons, Subhan son of Nur, Nathu son of Sodagar, and Bahadur son of Nuna, near relations, stay in the village and break up culturable land, they should be entitled to remain there without ejectment so long as they pay the rent: and they have in respect of other lands covered by this agreement been declared to be occupancy tenants

on the strength of it. The terms of the agreement are not clearly expressed. But I think it may be taken in accordance with the ordinary practice that no right is conferred in respect of land acquired by descendants of these persons otherwise than by breaking it up or, if already cultivated and abandoned, by taking it over.

Thus fields Nos. 1355-576, 1360-576, and 806 which in 1890-91 were in possession of Subhan as mortgagee of Karim Bakhsh and since have come into the possession of his heirs cannot be regarded as covered by the agreement. As regards No. 1000, in 1865 it was in possession of one Sodagar who is not proved to be the predecessor of the present tenants. The remaining number 1553-575 was cultivated in 1865 and after that presumably was broken up by Subhan and this may be regarded as covered by the agreement. The Appellate Court has not dealt with this field at all and its failure to do so is a material irregularity. I accept revision in so far that I cancel the notice of ejectment in respect of field No. 1353-575 and declare it to be an occupancy tenancy. Each party to pay their own costs.

Revision partly accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 21 of 1931-32. (Decided on 21-11-31).

Miles Irving, F. C.

CHANDAR PARKASH

Applicant

Versus

LAKSHMI NARAIN

Respondent.

(i) Punjab Land Revenue Act, Ss. 16 and 14—revision—interference.

Although there is no period of limitation prescribed for petition of revision, the Financial Commissioner should refuse to interfere on such petition, if made after the period assigned for an appeal, in the absence of reasons justifying extension of the period of limitation.

(ii) Punjab Land Revenue Act, S. 37—duty of Revenue Officer—rule of succession—summary inquiry.

Where the Revenue Officer has to determine who is the heir he must obviously determine what is the rule of succession. It is true that he need not enter into any intricate questions of law, but when any of the parties to a mutation claims to be governed by personal and not by customary law, he must come to a decision, however summary.

(iii) Punjab Land Revenue Act, S. 16—powers of revision—exercise of—conformity with S. 115, C.P.C.

Held, although the revisional powers of the Financial Commissioner under the Land Revenue Act are unlimited, he would not exercise them except in cases governed by S. 115, C. P. C. Held also, that it is absurd that in disputes which only deal with presumptions greater latitude should be given than in disputes governing rights.

Case forwarded by the Commissioner of Ambala Division, with his opinion thereon.

ORDER.

On the death of Pandit Nanak Chand, mutation was effected in favour of the reversioner Lakhshmi Narain on 3rd July 1930. Chandar Parkash alleged to be the adopted son of Nanak Chand appealed to the Collector who rejected the appeal on 22nd December 1930,

On 10th August 1931, Chandar Parkash applied for revision to the Commissioner who has recommended that mutation be effected in the name of Mst. Gobindi widow of Nanak Chand.

It is true as stated by the Commissioner that there is no period of limitation for applications for revision. But it is also true that parties must be expected to exercise due diligence in the prosecution of their claim. It would be monstrous to allow persons in whose favour a final order has been passed to lie indefinitely in peril of having to defend their case over again. In this case Chandar Parkash did not even apply for a copy of the order until over six months after the order: deducting the time taken in obtaining a copy the application was made 7½ months after. The widow has never moved in the matter either by way of appeal or application for revision. She only appears during the proceedings in the Commissioner's Court. The right principle to adopt in such cases is to refuse to interfere on a petition for revision if made after the period assigned for an appeal unless for reasons which would justify extending the period of limitation. I find no reasons in this case. A further reason for declining to interfere is that I have ruled that although my power of revision under the Land Revenue Act is unlimited I will not use it in cases of a judicial nature between parties except in cases covered by S. 115, Civil Procedure Code. It is absurd that in disputes which only deal with presumptions greater latitude should be given than in disputes governing rights.

Incidentally I must demur to the Commissioner's statement that it is not the business of a Revenue Court to decide whether the widow can succeed in a joint Hindu family. Where the Revenue Officer has to determine who is the heir he must obviously first determine what is the rule of succession.

It is true that he need not enter into any intricate questions of law, but when any of the parties to a mutation claims it to be governed by personal and not by customary law, he must come to a decision however summary.

I decline to interfere.

Interference declined.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 19 of 1931-32. (Decided on 28-12-1931.)

Miles Irving, F. C.

MUSHTAQ RAI

Applicant

Versus

CROWN

Respondent.

Fundamental Rules—reversion to substantive post—appeal—removal from list of candidates.

Held, that no appeal lies from an order reverting an officiating member of the subordinate service to his substantive post.

Held also, that no appeal lies from an order removing the name of a candidate from a list of candidates.

Revision from the order of the Commissioner of Rawalpindi Division.

ORDER.

The applicant for revision is a patwari who has for misconduct been reverted from the officiating appointment as field kanungo and has also had his name removed from the register of kanungo candidates. His appeal has been rejected by the Commissioner.

As regards his reversion, I hold that the punishment of reduction to a lower post referred to in rule 3 of the Punjab Service Punishment and Appeal Rules means reduction to a lower substantive post. This is implied in Fundamental Rule 15, which only lays down in the case of substantive posts that reduction shall not be made except in the case of inefficiency or misbehaviour. I rule that a Government servant officiating in an appointment is on probation in that appointment and that as the discharge of a person on probation does not amount to removal or dismissal for the purpose of rule 3, so his reversion to his substantive post does not amount to reduction for the purpose of that rule. Hence, no appeal lies from an order reverting an officiating member of the subordinate services to his substantive post.

Also no appeal lies from an order removing the name of a candidate from a list of candidates.

The application for revision is therefore rejected.

Application rejected.

LAHORE HIGH COURT.

Appellate.

Civil.

No. 786 of 1930 (Decided on 3-2-1931).

Addison and Bhide, JJ.

LABHU

Appellant

Versus

BALWANT SINGH and others

Respondents.

Punjab Tenancy Act, S. 77 (3), Proviso (2)—plaint returned to the Revenue Court—duty to come to a decision.

Where the Civil Court can come to a final decision of the suit without deciding any matter which can be heard and determined only by a Revenue Court, it must do so and an appeal would lie to the District Judge in such a case as well as a second appeal to the High Court. If, however, it becomes necessary to decide such a matter, the plaint must be returned for presentation to the Collector and it is for the Revenue Court then to hear and determine the suit, no matter whether the Civil Court has already expressed an opinion upon certain questions arising in the suit.

Second appeal from an order of District Judge, Hoshiarpur.

Appellant :—by Mr. Shambu Lal Puri for Mr. Mukand Lal Puri.

Respondents :—by Mr. Sohan Lal.

JUDGMENT.

Addison, J.—The plaintiff's father sold an occupancy holding to certain persons. The landlords sued in the Revenue Courts for ejectment of the vendees on the ground that the sale was voidable at their instance. They obtained a decree from the Revenue Court and, in execution of that decree, for some reason or other, the vendor, as well as the vendees, were evicted from the tenancy. Accordingly, the plaintiff sued in the Civil Court for possession of his occupancy holdings on the ground that he was entitled to be restored to possession after the sale had been set aside. There is no question that the suit lay in the Civil Courts. The landlords pleaded that the occupancy rights had become extinct. This issue is undoubtedly one triable exclusively by the Revenue Courts. If, therefore, it became necessary to decide it the provisions of S. 77 (3), provisos (1) and (2), Punjab Tenancy Act, would apply. In the opinion of the Subordinate Judge, Third Class, trying this case it became necessary to try this issue. It was pleaded by the defendants that the suit had totally abated in view of the fact that representatives of certain deceased landlords had not been brought on the record in time. The Subordinate Judge held that there was only partial abatement as regards the shares of certain landlords. As his decision did not dispose of the suit he endorsed upon the plaint the matter for decision which could only be heard and determined by the Revenue Courts as well as the particulars required by O. 7, r. 10, Civil P. C. and returned the plaint for presentation to the Collector.

One of the defendants preferred an appeal in the Court of the District Judge who rejected the appeal. The same defendant has preferred this second appeal in this Court.

It was contended before us that a second appeal did not lie and it seems to me that this contention must prevail. An appeal lies from the order returning a plaint for presentation to a proper Court, but a second appeal does not lie in such a case. There is no dispute about this.

An attempt was, however, made to argue that a second appeal lay to this Court as regards the portion of the suit decided by the Civil Court

apart altogether from the right of the appeal given under the Code from the order of the Court returning the plaint for presentation to the Collector. In order to decide this question it is necessary to set forth S. 77 (3) with its two provisos in full :

"The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :

(1) Where, in a suit cognizable by and instituted in a Court, it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by O. 7, r. 10, Civil P. C. and return the plaint for presentation to the Collector.

(2) On the plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in S. 77 (3), Group 1, Punjab Tenancy Act, 1887, and in other cases may send the suit to an Assistant Collector of the first grade for decision."

It became necessary in this case to decide a matter which could be heard and determined only by a Revenue Court. The trial Judge, therefore, correctly endorsed this upon the plaint together with the particulars required under O. 7, r. 10, C. P. C. and returned the plaint for presentation to the Collector. Proviso (2) is to the effect that upon such a plaint being presented to the Collector, the Collector shall proceed to hear and determine the suit where the value is such that he must try himself while in other cases he is authorised to send the suit to an Assistant Collector of the first grade for decision. This proviso is very clearly worded and I am compelled to hold that what is meant is that the whole suit goes to the Collector for trial and not that matter which could only be heard and determined by the Revenue Courts. This follows from the wording of the two provisos. It was objected that this would mean that the same plea of abatement could be taken before the Revenue Court though it had been rejected by the Civil Court. This may or may not be so (as to which we express no opinion). Where the Civil Court can come to a final decision of the suit without deciding any matter which can be heard and determined only by a Revenue Court it must do so and an appeal would lie to the District Judge in such a case as well as a second appeal to this Court. This is pointed out in my judgment in the Full Bench case, *Cheta v. Baija* (1) at pp. 59 and 60 (of 9 Lah.) My judgment did not go into the question, what would happen when the plaint was returned for presentation to the Collector as that question was not before the Full Bench. This is the first time that I have seen this question raised and that is why I referred it to a Division Bench when it came before me sitting alone. It is true that Tek Chand, J., in his judgment in the Full Bench case at

(1) 9 Lah. 38 (F. B.) A. I. R. 1927 Lah. 452 :

pp. 61 and 62, seems to contemplate that there may be a second appeal to this Court as regards one part of the case, and a second appeal to the Financial Commissioner as regards the other part, but that question was not argued and this remark was merely obiter. In my judgment there is no escape from the conclusion that the Civil Court must decide such a suit as the present, if it can do so without deciding a matter which can be heard and determined only by a Revenue Court. If, however, it becomes necessary to decide such a matter the plaint must be returned for presentation to the Collector and it is for the Revenue Court then to hear and determine the suit, no matter whether the Civil Court has already expressed an opinion upon certain questions arising in the suit.

For the reasons given I would dismiss this appeal on the ground that no second appeal lies. I would leave the parties to bear their own costs as apparently this question has not been raised before.

Bhide, J.—I agree.

Appeal dismissed.

LAHORE HIGH COURT.

Revision Side.

Civil.

No. 604 of 1930. (Decided on 30-1-1931.)

Agha Haidar, J.

BHAGWAN SINGH

Petitioner

Versus

GANDA SINGH

Respondent.

Punjab Tenancy Act. S. 77 (3) (g), (i) and (l)—lessee not getting possession—suit for refund of money paid as rent—jurisdiction.

Where an owner of land gave it on lease, and the lessee paid the rent in advance, but could not get possession, held, that the suit for the refund of money did not fall under clause, (g), (i) or (l) of S. 77 (3) of the Punjab Tenancy Act and was cognizable by a Civil Court only. 172 P. R. 1888 relied on.

Civil Revision against the decree of Senior Sub-Judge, Lyallpur.

Petitioner :—by Mr. Shamair Chand.

Respondent :—by Mr. H. C. Kumar.

JUDGMENT.

The petitioner, Bhagwan Singh, a Sub-Inspector of Police, had given half a square of land on lease to Ganda Singh, plaintiff-respondent, and received from him a sum of Rs. 300 as rent, in advance. Bhagwan Singh had another tenant, Sher Singh, who was in cultivatory possession of three squares, including the half square which had been leased to Ganda Singh. Ganda Singh could not get possession of half the square leased out to him. He accordingly sued Bhagwan Singh for the refund of the

money. The trial Court dismissed the suit but, on appeal, the Senior Subordinate Judge, with appellate powers, accepted the appeal and granted a decree to the plaintiff. Bhagwan Singh came to this Court in revision.

I admitted this case at the preliminary hearing, because Mr. Shamair Chand raised the question that the Civil Courts had no jurisdiction to entertain the present suit. This question seems to have been raised in the trial Court and, in fact, an issue was framed on it, but the pleader for the defendant did not press the point, and there is no mention of it in the judgment of the lower appellate Court. However, the question being one of jurisdiction, I allowed Mr. Shamair Chand to argue it. After reading the plaint I have no doubt in my mind that it is a suit for the refund of a sum of money, the consideration for which has failed, and is, therefore, clearly cognizable by the Civil Courts. Mr. Shamair Chand invited my attention to S. 77, sub-section (3), Clauses (g) (i) and (1), Punjab Tenancy Act. I have read these portions of S. 77 carefully and, in my judgment, on their very facts they seem to have no application. Mr. H. C. Kumar, on behalf of the opposite party, invited my attention to a case reported as *Mehr Din v. Karam Ilahi* (1). This case fully applies and is a sufficient answer to Mr. Shamair Chand's contention. In fact, the case before me is stronger, in that in *Mehr Din v. Karam Ilahi* (1) the plaintiff-lessee had been let into possession, while in the present case he never got it.

I do not think that there is any force in the contention raised by Counsel for the appellant.

The application is dismissed with costs.

Application dismissed.

LAHORE HIGH COURT.

Reference Side.

Civil.

No. 2 of 1931. (Decided on 7-5-1931.)

Jai Lal, J.

MEMMON and others

Defendants

Versus

ALLAH BAKHSH and others

Plaintiffs.

Punjab Tenancy Act, S. 4 (1)—“such land”—“purpose”—meaning of.

Held, (i) that “such land” as used in S. 4 or for purposes of S. 4 (1) of the Tenancy Act means land occupied for or let for agricultural purposes or for purposes subservient to agriculture; (ii) and that the “purpose” which is contemplated in the definition should be the direct purpose for which the land is occupied by or has been let to the occupier and not the object of the owner which supplies the test.

(1) 172 P. R. 1888.

Hence where certain houses were leased out for the residence of the lessees on their supplying to lessors *kallar* to be utilized by the latter as manure for their agricultural land, held, that it could not be said that the occupier's purpose was agricultural or subservient to agriculture.

Punjab Tenancy Act, S. 77 (3) (e)—Houses leased out for residence—suit for ejectment—jurisdiction.

Where certain houses situate in *ghair mumkin abadi* were leased out to the lessees to supply the owners with *kallar*, to be used by the latter as manure, in lieu of rent and the lessors did not hold any other land under the owners for cultivation along with the houses, held, in a suit for ejectment, that as there was no relation of landlord and tenant between the lessors and lessees, the suit did not fall under S. 77 (3) (d) of the Tenancy Act and was cognizable only by the Civil Court. 12 P. R. 1907 distinguished.

Case referred by the Collector of Multan.

Plaintiffs :—by Mr. Ram Lal Anand.

Defendants :—by *Nemo*.

JUDGMENT.

The Collector of Multan has, under S. 100, Punjab Tenancy Act, submitted this case to this Court with the recommendation that the decree of the Assistant Collector, first grade, Multan, dated 25th August 1930, in *Allah Bakhsh and others v. Memmon and others*, be registered in the Court of the Subordinate Judge of Multan having jurisdiction to entertain the suit. The facts are these :

The plaintiffs instituted a suit in the Court of the Assistant Collector, first grade, for ejectment of the defendants alleging that they had settled the defendants in houses constructed by them, that the latter in lieu of rent agreed to supply them *kallar* which they intended to utilize as manure for their agricultural lands and that the defendants had not performed the conditions on which the houses were given to them, *i. e.*, had not supplied *kallar* and were, therefore, liable to ejectment. It appears to have been conceded that the defendants had also built some *katcha* structures which they could remove. The defendants denied these allegations but at present we are not concerned with this aspect of the case : they, however, raised an objection as to the jurisdiction of the Revenue Courts to entertain the suit, but the Assistant Collector entertained it and finally decreed it.

An appeal was preferred to the Collector who, being of opinion that the suit was cognizable by the Civil Courts, has made the recommendation as stated above. The houses in dispute are situated in what is called *abadi chah* and the land on which they stand is classified in the revenue records as *ghair mumkin abadi*. It does not appear that the defendants had any other land proved by plaintiffs in their possession for cultivation along with the houses or with the sites thereunder.

The defendants did not appear before me. The plaintiffs were, however, represented by Mr. Ram Lal Anand who opposed the

recommendation and asserted that the suit was cognizable by the Revenue Courts.

In my opinion, the view of the Collector is correct. The determination of the question depends upon whether the suit is excluded from the jurisdiction of the Civil Courts by virtue of S. 77 (3) (e), in other words, whether it is a suit by a landlord to eject a tenant. Now the expression "tenant" and "landlord" for the purposes of the Punjab Tenancy Act are defined in S. 4, sub-sections (5) and (6) respectively. "Tenant" means a person who holds lands under another person, etc. and "landlord" means a person under whom a tenant holds land.

The real question is whether the defendants in this case hold land under the plaintiffs. Now "land" has been defined in S. 4 sub-section (1) to mean land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures of such land. "Such land" of course means land occupied or let for agricultural purposes or for purposes subservient to agriculture. It is therefore to be seen whether the land in this case is occupied or has been let for agricultural purposes or for purposes subservient to agriculture. It is contended on behalf of the respondents that as the object of the plaintiffs was to secure manure for the purposes of cultivating their land, therefore, the land under the houses in dispute must be deemed to have been let for purposes subservient to agriculture. But in my opinion the purpose which is contemplated in the definition should be the direct purpose for which the land is occupied by or has been let to the occupier by the owner, that is to say, it is the purpose of the occupier and not the object of the owner which supplies the test. The purpose in the present case is merely the residence of the occupier in the houses in question. The consideration paid or to be paid by the occupier is no doubt calculated to promote the agricultural pursuits of the owner, but it cannot be asserted that the occupier's purpose is agriculture or subservient to agriculture.

Mr. Ram Lal Anand cited *Gowhra v. Ali Gohar* (1), in which it was held that a suit for the recovery of *haq buha* is cognizable by the Revenue and not by the Civil Courts on ground that "haq buha appears to be a village cess customarily leviable within an estate." This case is not of any assistance in deciding the present question because S. 77 (3) (i), Punjab Tenancy Act, excludes from the jurisdiction of the Civil Courts suits for sums payable for village cesses or village expenses. In the present case the suit is for the ejectment of the defendants and not for the recovery of the

(1) 11 P. R. 1890 (Rev.)

value of the kallar which according to the plaintiffs, the defendants should have supplied assuming that a suit for the recovery of such value stands on the same footing as a suit for the recovery of village cesses or expense—a matter which in my opinion is at least doubtful.

Reference also was made to *Gundu Singh v. Natha Singh* (2). That also does not materially help the learned counsel because the facts of that case do not appear from the judgment as reported. The nature of the suit is not specified, nor is it shown what area was in possession of the defendants and whether the land which was the subject matter of the suit in that case was the only land in possession of the defendants or whether they cultivated other land belonging to the plaintiffs. Moreover, whatever facts are stated there they are distinguishable from the facts of this case.

The present suit in my opinion was cognizable by the Civil Courts and it is not shown that the mistake as to jurisdiction has prejudiced either of the parties. It appears to have been decided by the Assistant Collector in good faith. I consequently direct that the decree of the Assistant Collector be registered in the Court of the Subordinate Judge at Multan. No order as to the costs of this reference.

Decree registered.

LAHORE HIGH COURT.

Appellate

Civil.

No. 52 of 1929. (Decided on 4-2-1931).

Jai Lal and Abdul Qadir, JJ.

LABHU and others

Appellants

Versus

UTTAM and others

Respondents.

Punjab Tenancy Act, S. 59—Agreement overriding statutory rules—onus of proof.

A person who rests his case upon an agreement overriding the statutory rules of succession contained in S. 59, Tenancy Act, must show that the language of the agreement is clear and that the intention is unmistakable. But it is not so where a *wajib-ul-arz* of 1852 qualified the right of qarabatis, by the words "*jo mustahiq hai*" which can reasonably be interpreted to confine the right to those entitled under the law. Under S. 59 those qarabatis can succeed whose common ancestor occupied the land.

Punjab Tenancy Act S. 111—Entries in *wajib-ul-arz*—if constitute agreement under.

Where the terms of an entry in *wajib-ul-arz* are expressly limited to that particular settlement, they cannot be considered to have the effect of agreements between landlords and tenants within the meaning of S. 111. 185 P. W. R 1918 16 P. R. 1915 followed 2. P. R. 1919 (Rev.) disapproved.

Second appeal against decree of District Judge, Hoshiarpur.

(2) 12 P. R. 1907.

Appellant :—by Mr. Anant Ram Khosla.

Respondents :—by Mr. Faqir Chand.

JUDGMENT.

Abdul Qadir, J.—The suit out of which this second appeal has arisen was for possession of 4 kanals and 16 marlas of occupancy land, instituted by the collaterals, of a decendant of a deceased occupancy tenant, against the landlords, who had resumed possession of the land in suit on the death of the widow of the last occupancy tenant and in the absence of any of the descendants of the said tenant. The suit was dismissed by the trial Court and the appeal of the plaintiffs was also rejected by the District Judge of Hoshiarpur. The second appeal came up for hearing before a single Bench but it was ordered that it may be heard by a Division Bench because of an important question of law involved in the case, concerning the interpretation of the terms of a *Wajib-ul-arz* and as to the entries in the same overriding the provisions of S. 59, Punjab Tenancy Act.

Mr. Anant Ram Khosla, for the appellants, relied on the terms of the *Wajib-ul-arz* prepared in the settlement of 1852 which provided that on the death of an occupancy tenant, his son, and in the absence of a son, his brother or a qarabati, "who may be entitled", would cultivate the land. This entry of the first Settlement was repeated exactly in the same words in the Settlement of 1884, but it was added at the end of that entry that no investigation as to the rights of the occupancy tenant had been made in that settlement. In 1914 a similar entry was repeated, presumably without any investigation again. The learned Counsel refers to Ss. 111 and 112, Punjab Tenancy Act, and contends that, according to S. 112, the entry in the Settlement of 1852 amounts to an agreement between the landlords and tenants, which can override the provisions of S. 59, Tenancy Act, and adds that the subsequent entries, though not made after any investigation of the rights of occupancy tenants, must also be held to be continuations of the same agreement, especially because they relate to a question of succession.

The Courts below have interpreted the words "*jo mustahiq hai*" (whosoever is entitled), in reference to the qarabati mentioned in the *Wajib-ul-arz*, as meaning "who is entitled by the provisions of the law applicable to the succession." They have held, in consequence, that the rule of the succession as embodied in S. 59, Tenancy Act, is that a collateral related to the deceased tenant in the main line of descent from the common ancestor succeeds, if the common ancestor occupied the land. This admittedly was not the case here and, therefore, the claim of the plaintiffs' collaterals was defeated.

Mr. Fakir Chand, on behalf of the respondents, meets the arguments of the appellants with the contention that the entry of 1852, assuming it to be an agreement between landlords and tenants under S. 112, Punjab

Tenancy Act, was expressly limited to that Settlement and having been repeated in the subsequent Settlement and that the subsequent entries having been made after 1871 do not amount to agreements unless it is expressly shown that they had that character, and were understood in that light by the parties thereto. He refer to *Mumraj v. Rampat* (1), in which it was held that a repetition of original entry is no proof of an agreement unless it is shown that the landlords and tenants expressly agreed to abide by the same conditions as before.

It is true that the extract from the entry in the *Wajib-ul-arz* of 1852, clearly shows that the occupancy tenants after hearing the conditions from the munsarim of the Settlement agreed to remain occupancy tenants till the period of that Settlement, but it is clearly stated that the operation of these conditions was limited to that Settlement. According to the decision of a Division Bench of the Chief Court in *Labhu v. Ganda Singh* (2) relating to a *Wajib-ul-arz* of 1852 in the District of Hoshiarpur, the terms of the entry of 1852 were limited to that Settlement and it was also held that the subsequent entry in the Settlement of 1884, made without any investigation into the rights of the occupancy tenants, had not the force of continuing the previous agreement of 1852. A similar view was expressed in *Hira v. Muhammadi* (3). Against this view a decision of the Hon'ble the Financial Commissioner in *Ram Singh, etc. v. Kishan Chand* (4) is cited for the appellants, in which it was observed that the agreement of the Settlement of 1857, (in that case), was not in force only for the term of that Settlement, but subsisted even after the expiry of that settlement, in matters of succession. With due deference, however, to the opinion of the learned Financial Commissioner, I prefer to follow the view taken by the two Division Benches of the Punjab Chief Court on this point and do not consider the entries in 1884 and 1914, in the *Wajib-ul-arz* before us to have the effect of agreements between landlords and tenants in the village in question; nor can the entry of 1852, be regarded as an agreement which is still operative, as the terms of the entry expressly limited it to that particular settlement.

Coming to the interpretation of the words "who may be entitled" the conclusion arrived at by the Courts below is supported by an opinion expressed in *Allah Ditta v. Achhru Mal* (5) by Johostone, J. who made the following observations concerning a *Wajib-ul-arz* which stated that on the death of an occupancy tenant without sons succession should go to *bhai-ya-garabati*.

"Section 59 (c), Tenancy Act, was not invention of the legislature: it was intended to meet more or less the sentiments and habits of

(1) 3 P. R. 1889 Rev.

(2) 2 P. L. R. 1914.

(3) 16 P. R. 1915.

(4) 8 P. R. 1919 Rev.

(5) 38 P. R. 1910.

the people, and therefore, unless the indications that way are perfectly clear, it is impossible to hold that the landlords in 1851 agreed that when an occupancy tenant died, any *qarabati* should succeed. It is reasonable to suppose that the landlords, if they agreed at all, agreed to the succession of such brothers and *qarabatis* as might be entitled under tenancy law and custom, and this idea of a right accruing only to descendants of a person who once held the land, is a fundamental idea in the minds of the peasantry."

I see no reason to differ from the above interpretation. It was held in *Mst. Walayat Begam v. Sher Ali Shah* (6) that a person who rests his case upon an agreement overriding the statutory rules of succession contained in S. 59, Tenancy Act, must show that the language of the agreement is clear and that the intention is unmistakable. But this cannot be said of the agreement of 1852, which qualified the right of *qarabatis*, by the words "jo mustahiq hai," which can reasonably be interpreted to confine the right to those entitled under the law. It is clear that under S. 59 the law is that those *qarabatis* can succeed whose common ancestor occupied the land, which is not the case with the plaintiffs-appellants in this litigation. The decision of the lower appellate Court is, therefore, correct. This appeal must fail and I would dismiss it with costs throughout.

Jai Lal, J.—I agree.

Appeal dismissed.

LAHORE HIGH COURT.

Appellate.

Civil.

No. 2067 of 1930. (Decided on 26-2-1931).

Addison, J.

MULA SINGH and another

Appellants

Versus

MUHAMMAD SHER and another

Respondents.

Punjab Tenancy Act, S. 59 (1) (c)—Occupancy tenancy—collateral succession.

An occupancy tenancy devolves upon the male collateral tenant after the widow's death in the absence of male issue, provided that the common ancestor had occupied the land.

Second appeal against decree of District Judge, Jhelum.

Appellants :—by Mr. Brij Lal.

Respondents :—by Mr. R. C. Soni.

JUDGMENT.

Wazir Singh purchased the occupancy tenancy in suit from a stranger, Ganga Singh. He died and was succeeded by his widow, *Mst. Ghero*,

(6) 19 P. R. 1917.

She has sold the occupancy tenancy to two persons. Mula Singh and Dhera Singh have come forward to sue for possession by pre-emption of the tenancy. Their suit has been dismissed by the lower appellate Court and against this decision the plaintiffs have preferred this second appeal.

Wazir Singh is a grandson of Mitha Singh and the two pre-emptors are great grandsons of the same person. The lower appellate Court has found that the common ancestor, Mitha Singh, did hold, for one harvest at least, the land in question as a tenant of the then occupancy tenant, Ganga Singh. He decided, however, that that was not enough to make the pre-emptors heirs and it was admitted that if the pre-emptors are not entitled to succeed to the occupancy tenancy they are not entitled to pre-empt the sale.

The occupancy tenancy does devolve upon the male collateral relatives of a deceased occupancy tenant after the widow's death in the absence of male issue provided that the common ancestor had occupied the land. In my judgment, the fact that Mitha Singh was, for a harvest or two, a tenant of the then occupancy tenant, Ganga Singh, does not mean that he occupied the land within the meaning of S. 59 (1) Punjab Tenancy Act. What is meant there is that it is not necessary to decide in what capacity the common ancestor held the land provided he did hold it and the land descended from him to his heirs. It is impossible to construe the proviso to S. 59 (1) as meaning that a tenant holding an occupancy tenancy for a brief period under the existing occupancy tenant or a trespasser holding the land, say for two days, is a person who occupied the land. At the same time when Mitha Singh was tenant the occupier of the land was the occupancy tenant then in existence, namely Ganga Singh.

For the reasons given, I am of opinion that the judgment of the lower appellate Court is correct and I dismiss the appeal with costs.

Appeal dismissed.

LAHORE HIGH COURT.

Appellate

Civil.

No. 51 of 1927. (Decided on 24-2-1931).

Rhide and Tapp, JJ.

TIRATH RAM and others

Appellants

Versus

MST. NIHAL DEVI

Respondent.

Punjab Land Revenue Act, Ss. 117, 158—Partition proceedings—question of title involved—suit not filed in the Court of the Revenue Officer, though so directed—partition carried out—subsequent civil suit. Jurisdiction of Civil Court.

A widow filed an application for partition of ancestral property before the Revenue Officer which was objected to by her husband's relatives on a question of title. The latter were directed to file a suit in his Court, but no such suit

being instituted, the Revenue Officer carried out the partition. They, then, brought a civil suit for a declaration that the widow, being only entitled to maintenance, could not claim partition. The suit was dismissed by the District Judge on the ground that the failure to bring a suit in the Court of Revenue Officer was a bar to bringing a civil suit. Held, that in the present circumstances, the Revenue Officer was not justified in proceeding with the partition, without the question of title being decided, for it was a clear disregard of the provisions of S. 117 and the instructions contained in para 8 of Standing Order No. 27 and he could decide the question of title himself in the absence of a duly stamped plaint. Held also, that the suit filed subsequently was cognizable by the Civil Court and that S. 158 of the Land Revenue Act was no bar to it. 61 P. R. 1897 E. B. applied, 146 P. L. R. 1902 distinguished.

Second appeal against decree of District Judge, Gujranwala.

Appellants :—by Mr. Hazara Singh Upal.

Respondent :—by Mr. Ram Lal Anand.

JUDGMENT.

Tapp, J.—The material facts relating to this second appeal are shortly as follows :

On the death of one Kirpa Ram his 1/5th share in the ancestral land was mutated in favour of his widow, Mst. Nihal Devi, the defendant-respondent. She filed an application for partition before the revenue authorities which was resisted by three of her late husband's brothers and his nephew, the plaintiffs-appellants, on the question of title. They were directed by the Revenue Officer to file a suit in his Court and on their failing to do this the partition was carried out. They then brought the present suit for a declaration that Mst. Nihal Devi being only entitled to maintenance could not claim partition. The suit was dismissed on merits and the learned District Judge relying on *Mst. Ram Kaur v. Emperor* (1) dismissed the appeal on the ground that plaintiff having failed to bring a suit in the Court of the Revenue Officer as directed by him the present suit in a Civil Court was not competent.

Now the facts in the case cited are clearly distinguishable from those in the present case, the chief point of difference being that in the former the partition proceedings were still pending when a suit was brought in a Civil Court. The Civil Court declined to entertain the suit on the ground that a suit involving the same question was already pending in the Court of the Revenue Officer. The suit was thereupon consigned to the record room under S. 12 of the old Civil Procedure Code (S. 10 of the present Code). An appeal against this order was dismissed and the petition for revision which was dealt within the ruling cited was also rejected. The *ratio decidendi* in that case was the correct application of S. 12 (now S. 10) of the Civil P. C. to the facts. The decision is no authority for the proposition that in no circumstances can a Civil Court entertain a suit concerning a question of title arising out of partition proceedings.

(1) 145 P. L. R. 1902.

According to S. 117, Land Revenue Act, two courses are open to a Revenue Officer, when a question of title arises in a partition proceedings pending before him :

(1) defer further action as to partition till the question of title is determined by a competent Civil Court to which the person or persons raising the question of title should be referred, or (2) determine the question himself as though he were such a Court.

In the latter case the procedure to be followed is regulated by sub-section (2) of the section.

Now in the present case the Revenue Officer beyond directing the plaintiffs to file a duly stamped plaint before him in order that he might decide the question of the title never actually did so, for, on plaintiffs failing to file a plaint as directed, the Revenue Officer ordered a partition to be made and this was duly effected. This was a clear disregard of the provision of S. 117 and the instruction contained in para 8 of Standing Order No. 27 which sufficiently repels the argument of Mr. Ram Lal as to the inability of the Revenue Officer to decide the question of title in the absence of a duly stamped plaint.

As observed in *Bachan Singh v. Madhan Singh* (2) the action of the Revenue Officer in proceeding with the partition without any decision of the question of title was opposed to law. In my opinion, the jurisdiction of the Civil Court to entertain the present suit in the circumstances was not barred under S. 153, Land Revenue Act.

I would, accordingly, accept the appeal and setting aside the decree of the lower appellate Court remand the case for re-decision on the merits, and in accordance with law. Costs to abide the result. Court fees on appeal to be refunded.

Bhide, J. — I agree.

Appeal accepted.

LAHORE HIGH COURT.

Original Side

Civil.

No. 37 of 1930. (Decided on 2-3-1931).

1 app. J.

POHU LAL

Plaintiff

Versus

KAPURA and another

Defendant.

Punjab Tenancy Act, S. 77 (3) (n) — Suit by assignee of mortgages for recovery of rent — if cognizable by Civil Court.

A suit brought by the assignee of the mortgagee for the recovery of rent from certain person to whom the lands are alleged to have been given for cultivation by the mortgagee and in which neither of the mortgagee nor his assignee claim to be the landlords is cognizable by a Civil Court.

(2) 61 P. R. 1897 (F. B.).

Reference by Assistant Collector, 1st grade, Hoshiarpur.

ORDER.

This is a reference by an Assistant Collector, First Grade, through the Collector of Hoshiarpur, under S. 99, Punjab Tenancy Act, in respect of three suits, originally brought in the Court of the Subordinate Judge, Una, by one Pohu Lal for recovery of Rs. 150 in one case against Kapura, Rs. 450 in the second case against Birju, and Rs. 330 in the third case against Palu and Hira, on account of the value of the produce of certain lands from Rabi 1926 to Kharif 1928. In each case, the plaintiff alleged that the lands in question had been mortgaged with possession to his son, Ram Rakha Mal, defendant, and had been cultivated by the other defendants. The produce of the harvests mentioned had been alienated by Ram Rakha Mal in favour of the plaintiff. Kapura and Birju, defendants, pleaded ignorance of the alleged mortgage and alleged that they were in proprietary possession of the lands under a private partition. Palu and Hira, defendants, alleged that the land had been given to them for cultivation by one Taloka, its proprietor, and that nothing was due by them on account of produce to the plaintiff.

The learned Subordinate Judge found that the suits were cognizable by a Revenue Court as they fell under Cl. (n), sub-S. 3, S. 77, Punjab Tenancy Act, and he, thereupon, returned the plaints in the three cases for presentation to Revenue Court. An appeal against this order was rejected by the Senior Subordinate Judge on 16th August 1930, and the plaints were then presented to a Revenue Court.

The Assistant Collector, First Grade, relying on *Ganpat Rai v. Sardar* (1) and *Chinti v. Nathu* (2) has found that the suits are cognizable by a Civil Court, and hence the reference.

Now, on the pleadings in the three suits, and particularly in the case in the suits against Palu and Hira, it seems to me that they are not suits between a landlord and tenant, but merely suits brought by the assignee of the mortgagee for the recovery of rent from certain persons to whom the lands are alleged to have been given for cultivation by the mortgagee. Neither the mortgagee, nor his assignee, claim to be the landlords of these particular holdings; and, in the circumstances it is extremely doubtful, in my opinion, whether any relationship of landlord and tenant arises or exists in the three cases. As remarked above, in two of the suits, the defendants claim to be owners under a private partition and, consequently, cultivating their own lands and not liable to render any produce to the mortgagee or to his assignee. The points, which arise for determination in the three cases, might be stated as follows:—

(1) Whether the defendant, Ram Rakha Mal, is the mortgagee of the lands in the three suits and has assigned his rights to the plaintiff?

(1) 13 I. C. 511.

(2) A. I. R 1928 Lah. 908 : 110 I. C. 510.

(2) Whether the mortgagee made over the lands to the different defendants for cultivation on payment of batai and, if so, what is due to the plaintiff as his share of the produce for the periods specified?

(3) Whether Kapura and Birju are owners of the lands as claimed by them, or are cultivating them in their own right, and are not under liability to render any produce to the plaintiff?

These are all points more appropriately determinable by Civil Court, and, in any case, if it should be found hereafter that they have been wrongly so decided, action can be taken under S. 100, Punjab Tenancy Act, and the decrees of the Civil Court registered as those of a Revenue Court.

I, therefore, order that the reference be returned to the Collector with the direction that the plaints in the three suits be returned for presentation to a Civil Court, which I declare to be competent to take cognizance of the suits.

Reference returned.

LAHORE HIGH COURT.

Appellate

Civil.

No. 1772 of 1926. (Decided on 16-4-1931.)

Harrison and Dalip Singh, JJ.

MOHAMMAD and another.

Appellants.

Versus

JEANDA and others.

Respondents.

Punjab Land Revenue Act, S. 158 (2) (xvii)—Shamilat land—suit to declare non-partibility—cognizable by Civil Courts.

A suit for a declaration that a piece of *shamilat* land is not partible involves a division as to title and is cognizable by Civil Courts.

First appeal against decree of Senior Sub-Judge, Ferozepur.

Appellants :—by Muhammad Alam and Barkat Ali.

Respondants :—by Bishan Nath and M. Amin.

JUDGMENT.

Harrison, J. In this case the plaintiffs brought a suit against four defendants, claiming a declaration to the effect that out of the total area of 5,023 kanals included in a partition of the Shamilat land of village Silewant by the Revenue Assistant on 22nd May 1924, an area of 3,063 kanals 6 Marlas should have been excluded on the ground that they had converted an area of 1,807 kanals 18 marlas from barani into chahi, and had reclaimed and made culturable a further area of 1,255 kanals 8 Marlas, that they had reclaimed and irrigated this land, relying on an agreement made by them with the ancestors of the defendants, and, that as a result of this action on their part, this area was excluded from the ordinary Shamilat and could not be partitioned.

The suit was dismissed by the trial Court on the finding that the question was not a question of title but related to method of partition and that, therefore, the Civil Courts had no jurisdiction. In our opinion, the question is clearly one of title as to whether this area is partible or not. We, therefore, accept the appeal, set aside the decree of the trial Court, and return the case to be decided on the merits, after issues have been framed on the various points raised in the pleadings. Stamp on appeal will be refunded and costs will abide the event.

Dalip Singh, J.—I agree.

Appeal accepted

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Appellate

Revenue.

No. 6 of 1920-21. (Decided on 31-3-1931).

Fagan, F.C.

JAWAHAR SINGH and others.

Appellants.

Versus

LABHU SINGH.

Respondent.

Punjab Tenancy Act, S. 22—enhancement of rent—occupancy tenant—under S. 5 (1) (a).

Held that where persons, who were originally occupancy tenants under S. 5 (1) (a), had been erroneously declared to be occupancy tenant under S. 8, and the question of status had become *res judicata*, it was not equitable to enhance the rate of *malikana* already paid, *i. e.*, 2 annas per rupee of the land revenue and cesses—which was the maximum rate for occupancy tenants under S. 5 (1) (a).

Appeal against the order of the Commissioner, Jullundhur Division.

ORDER.

The facts, regarding the history of the tenancy with which this case is concerned appear to have been correctly found in the second order of the Assistant Collector, dated 5-12-19, and in the order of the Commissioner under appeal. On these facts, the defendants would clearly be occupancy tenants under S. 5 (1) (a).

Unfortunately, the Settlement Officer held, erroneously it would appear, in 1888, when the facts were the same, that the defendants (or their predecessors-in-interest) were occupancy tenants under S. 8. His judgment was a final one so that the question of status is now *res judicata* as remarked by the Commissioner.

Under the peculiar circumstances, however, it is not, I think, equitable to enhance the rate of *malikana* hitherto paid, *i. e.* 2 annas per rupee of land revenue and cesses, which is the maximum rate for

occupancy tenants under S. 5 (1) (a). I, therefore, accept the appeal and restore the order of the Assistant Collector in so far as to dismiss the plaintiff's suit with costs throughout.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side

Revenue.

No. 57 of 1930-31. (Decided on 17-10-1931).

Miles Irving, F. C.

RAJ MAL.

Applicant.

Versus

GURBACHAN SINGH.

Respondent.

Lambardar—appointment of rule of heredity—to be applied.

A person, having a hereditary right to be appointed Lambardar, must be given preference, unless it is found either (a) that the circumstances exist as described in Land Revenue Rule 17 (ii) (b), namely, that his eligibility is affected by the offence (b) or that he is under the influence of the dismissed Lambardar or that (c) he has a personal disqualification or disability.

Lambardar—collector's choice to be upset when he has not weighed arguments—rule of heredity to be allowed.

Though the decision of the Collector regarding the appointment of Lambardar should generally be supported, but where the Collector does not take the trouble to express his own reasoned views and does not himself weigh arguments, his choice may be upset. Where the Collector passed over a person belonging to the predominant *got* in the village and who had a hereditary right to be appointed on the ground that he was old since he was 45 and that he was not influential, held, that a man of 45 cannot be called old man, that it is a serious matter to take away the Lambardari from the predominant *got* on such flimsy ground.

Revision from the order of the Commissioner of Jullundur Division.

ORDER.

Arjan Singh, *lambardar*, was dismissed and, in his place, the Collector appointed Gurbachan Singh who is no relation. Raj Mal who is descended from Raja Singh's great grandfather, appealed unsuccessfully and now applies for revision.

The case has been throughout dealt with without regard to the law. Raj Mal has a hereditary right to be appointed in preference to Gurbachan Singh, unless it is found either (a) that the circumstances exist as described in Land Revenue Rule 17 (ii) (b), namely, that his eligibility is affected by the offence or that he is under the influence of the dismissed Lambardar or that (b) he has a personal disqualification or disability.

Now it is nowhere suggested that the conditions of Land Revenue Rule 17(ii) (b) apply. Raj Mal has been passed over on the ground of two personal disqualifications (a) that he is old (b) that he is not influential.

Now it seems to me to be absurd to call a man of 45 old, and as regards influence, we have only the general statement of the Revenue Assistant, which is opposed to that of the Naib Tahsildar and Tahsildar. For Raj Mal is the important fact that he represents the important *got* in the village. It would be a serious matter to take away the Lambardari from the predominant *got* on such flimsy grounds.

I am aware that the decision of that Collector should generally be supported, but this does not apply to a case, where the Collector has not taken the trouble to express his own reasoned views but merely says he agrees with the Revenue Assistant and does not himself weigh the arguments.

I accept revision and appoint Raj Mal. Each party will pay its own costs in my Court.

Revision accepted.

IN THE COURT OF THE FINANCIAL COMMISSIONER OF THE
PUNJAB.

Revision Side.

Revenue.

No. 129 of 1929-30. (Decided on 12-12-1930.)

Townsend, F. C.

Mst. DILLO and others.

Applicants.

Versus

KAPURA.

Other Side.

**Punjab Tenancy Act, S. 84—revision—lower Court's order—
grounds of appeal not discussed—interference.**

Where the Collector's order was exiguous to a degree and did not comply with the requirements of the law, as he did not discuss each of the grounds of appeal, held, there was sufficient cause for interference.

Case forwarded by the Commissioner of Jullundur Division.

ORDER.

This case has been sent to me for exercise of my revisional powers with the Commissioner's reference, dated August 21, 1930, for the reason given therein. I have heard counsel for each side. I agree with the Commissioner that the Collector's order, dated 23rd July 1929, is exiguous to a degree, and cannot be allowed to remain. It does not comply with the requirements of the law, in that it does not discuss each of the grounds of appeal; and it is to me doubtful, as it was to the Commissioner, whether Collector applied his mind to the case to the extent requisite.

For the reasons given by the Commissioner, retrial *de novo* is necessary, so agreeing with him, I accept this application, and, setting aside all the orders that have been passed so far in this case, direct that it should

be entirely retried *ab initio* by any qualified Assistant Collector of the Kangra District. Application accepted,

Application accepted.

Order of the Commissioner, referred to above, is as follows :—

In the course of partition proceedings, the present plaintiff, Kapura, brought a suit for declaration that he has occupancy rights under Section 8 in 16 Kanals 4 marlas of *Shamilat* land in Toka Sahlwin, Hamirpur Tahsil. His suit is contested by the proprietors of the village. In the revenue record the plaintiff is entered as B (4) class tenant paying 2/5ths *Batai*. The plaintiff alleges that one Parju Chamar, who occupied the land in 1868, was his grandfather and that Parju, though not entered as occupancy tenant in the revenue record, was entitled to occupancy rights. The defendants plead that it is doubtful who the original tenant of the land was as he is at one place called Parju Chamar, while at another time by a somewhat different name classed as *Hajjam*. They add that this occupant, whoever he was, is not proved to be the grandfather of the plaintiff, that, subsequent to Parju, other tenants have cultivated the land, in fact, the proprietors themselves cultivated for a time, that on more than one occasion decrees for rent have been obtained against the plaintiff and in those suits he did not claim to be occupancy tenant.

The Revenue Assistant who tried the case fixed only two issues :—

1. Whether the suit was in time ? and
2. Whether the plaintiff was an occupancy tenant under S. 8 ?

The objection with regard to limitation was dropped, leaving only the second issue. From the allegation and the pleas, it is evident that the case required the framing of the other issues on the points in dispute. However, on issue No. 2, the Revenue Assistant decided that the plaintiff is an occupancy tenant under S. 8, though he does not find on what grounds he has acquired the rights under this section.

The defendants appealed to the Collector on the following grounds :—

(2) That the plaintiff's ancestors never cultivated the land and that he is not the successor of the original cultivator.

(3) That there is no mention anywhere in the revenue record of Gokal, father of the plaintiff.

(4) That Parju (whom plaintiff states is his grandfather) was not the original cultivator of the land and never obtained occupancy rights.

(5) That the residential houses on the land were built not by the tenants but by the proprietors, who gave them to the tenants for their use.

In his judgment, the Collector deals with no other point except the question of the identity of Parju Chamar, who is shown as a tenant in 1868. Even that point is not at all discussed by him. The judgment is an exceedingly brief one ; and, it is impossible to say from it, whether the Collector

gave any consideration at all to the case. Seeing that the Revenue Assistant himself failed to deal with some important pleas raised by the defendants, it was incumbent on the appellate Court to consider those points which were made grounds of appeal.

For the reason that the case was not properly tried in the first Court and that it has been very inadequately dealt with in appeal, I refer the order of the Collector to the Financial Commissioners for revision and recommend that it should be returned to be tried *de novo*. Neither party desires to be presented before the Financial Commissioners.

Note the delay in the disposal of this application for revision is due to the fact that it was fixed for hearing in Kangra District, but could not be heard there.

